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THE  
LONDON GOVERNMENT ACT,  
1899.

WITH NOTES, AN INTRODUCTION,  
AND AN INDEX.

BY

A. F. JENKIN,

OF THE INNER TEMPLE, BARRISTER-AT-LAW,

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LONDON :

KNIGHT & CO., 4, LA BELLE SAUVAGE YARD, E.C.

1899.

LONDON:  
PRINTED BY WILLIAM CLOWES AND SONS, LIMITED,  
STAMFORD STREET AND CHARING CROSS.

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## P R E F A C E.

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THE London Government Act, 1899, provides for the division of London, exclusive of the City, into "metropolitan boroughs," and for the establishment, in each metropolitan borough, of a borough council consisting of a mayor, aldermen, and councillors.

The borough councils will succeed to the functions and property of the existing vestries and district boards, and of the existing authorities charged with the execution of the Burial Acts, the Baths and Washhouses Acts, and the Public Libraries Acts. The council of each borough will also act as the overseers of every parish in their borough.

The Act further invests the borough councils with certain powers and duties which, since they do not attach to the bodies above referred to, may fairly be called new powers and duties.

In the present work I have dealt somewhat fully with the law relating to the constitution of the borough councils and the election of their members. And I have also dealt at some length with what I have described as their new powers and duties.

In other respects I have confined myself almost entirely to endeavouring to elucidate the provisions of the London Government Act itself, devoting particular attention to the clauses of the Act of most immediate interest, such as the clauses dealing with the preparation of schemes and with existing officers. I have made no attempt to discuss the existing law as to the powers and duties that will attach to the borough councils as successors of the vestries and district boards and of the other authorities above mentioned, or in their capacity of overseers.

The Act carries the method of legislation by reference to great lengths, so far, indeed, that it is even the exception, rather than the rule, that the substantive provisions on any matter dealt with in the Act are to be found in the enactments the Act directly refers to. Very frequently these

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enactments in turn refer to still earlier enactments, so that the legislation in the Act itself consists in great measure of legislation by double, often by manifold, reference.

Legislation effected by this method, to which recourse is rendered unavoidable by the difficulty of passing measures of any great length through Parliament, is necessarily more or less obscure. And the London Government Act, though by no means unskillfully drafted, is no exception in this respect. In the ensuing pages I have not attempted to conceal the difficulties and doubts which I have felt in considering the effect of the Act. And although I am conscious that many of my notes may seem inconclusive and hesitating, I believe that this circumstance is due to my having frankly stated difficulties instead of following the very common practice of concealing them by a use of studiously ambiguous language, and not to any false ingenuity in the discovery of imaginary difficulties.

Following a practice adopted on the authority of sect. 3 of the Statute Law Revision Act, 1893, in the later volumes of the Revised Statutes, I have, in any quotation from an Act which refers to another Act, substituted the short title of the latter for any more cumbrous method of citation. Further, I have, as a rule, made no specific mention of repeals effected by the Statute Law Revision Acts; words in any enactments that have been repealed by these Acts have usually been simply omitted.

My thanks are due to Mr. Randolph A. Glen, barrister-at-law of the Middle Temple, for aid in the correction of the proof sheets and in the preparation of the tables of statutes and cases.

A. F. JENKIN.

NEW COURT, TEMPLE.

*August, 1899.*

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## INTRODUCTION.

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BEFORE discussing the London Government Act, 1899, itself, it seems desirable to give a brief historical sketch of those features of the existing system of local government in London, which must be known before the provisions of the Act of 1899 can be understood.

The Metropolis Management Act, 1855 (18 & 19 Viet. c. 120) may be taken as the starting-point.

The area with which that Act dealt, and which is in that Act called the "metropolis," consisted of the City of London and a number of parishes and places enumerated in schedules A, B, and C to the Act.

The Act established for each of the parishes and places in schedules A and B (except Woolwich, which was at the time of the Act, and has since remained, under the government of a local board of health) an elective vestry, consisting of members elected by the ratepayers together with certain *ex officio* members. The term "elective" is not applied to these vestries by the Act of 1855, but is used in the London Government Act and is a convenient term.

The vestries of the parishes in Schedule A, which may, adopting the term used in the London Government Act, be called "administrative vestries," were incorporated and were given large powers of government, besides being invested with the functions attaching to vestries generally.

The vestries of the parishes and places in Schedule B were not incorporated and were not given any new powers of Government, though, like the administrative vestries, they were invested with the usual powers of vestries. These parishes and places were grouped into a number of districts, for each of which a district board of works was established, consisting of members elected by the elective vestries of the constituent parishes and

places. The district boards were given powers practically identical with those given to the administrative vestries.

Some of the districts formed by the Act of 1855 have since been dissolved, and save in one case where certain of the parishes comprised in a dissolved district were formed into a new district, the parishes in the dissolved districts have been placed under administrative vestries.

Subject to these alterations the elective vestries and district boards established by the Act of 1855 still exist, though altered to some extent in constitution. Under the London Government Act, 1899, they are to be abolished.

The internal government of the City of London, which was and is extremely complicated, resting partly on statute, partly on numerous charters, and partly on custom, was left substantially untouched by the Act of 1855. It will again be left substantially untouched by the Act of 1899.

The places enumerated in Schedule C to the Act of 1855 were small places of exceptional character. Their government was and is anomalous.

The Act of 1855 further established the Metropolitan Board of Works as an authority with jurisdiction in certain respects over the whole of the metropolis. The Board consisted of members elected by the Corporation of the City, the administrative vestries and district boards, and the local board of health of Woolwich.

By sect. 249 of the Act of 1855 provision was made for future alteration in the area of the "metropolis"; but this provision was never acted upon, and the section is now repealed.

The scheme of government introduced by the Metropolis Management Act, 1855, remained in its main features unchanged until the Local Government Act, 1888, came into operation, though in the meantime the Act of 1855 had been amended by several Acts, and numerous additional powers and duties had been conferred and imposed on the Metropolitan Board of Works and on the administrative vestries and district boards.

The Local Government Act, 1888 (51 & 52 Vict. c. 41), by which county councils were established, and which gave the name of "administrative county" to the area for which a county council is elected, constituted the area forming the "metropolis" under the Metropolis Management Acts, into an administrative county under the name

of "the administrative county of London," and established the London County Council as the county council for that administrative county.

The Act abolished the Metropolitan Board of Works and transferred their functions to the London County Council, but left the vestries and district boards substantially unaffected.

Besides constituting the administrative county of London, the Act of 1888 provided, by sect. 40 (2), that such portion of the administrative county of London as formed part of the counties of Middlesex, Surrey, and Kent should be severed from those counties and should form a separate county for all non-administrative purposes by the name of the county of London (*ib. s. 40 (2)*). Certain saving clauses in the Act, however, prevented this provision from taking absolutely complete effect. Thus the county of London is not a separate county for the purpose of Parliamentary representation, and for that purpose its creation did not affect the boundaries of Middlesex, Surrey, or Kent.

The City of London is and has been from time immemorial a county of itself. Consequently the county of London is practically the administrative county of London less the City. There are, however, certain small exceptional areas that are within the City for certain purposes and without the City for other purposes, and the existence of these areas renders it unsafe to assume that expressions such as "London outside the City" necessarily designate exactly the area constituting the county of London.

The areas mentioned in Schedules A, B, and C. to the Metropolis Management Act, 1855, which, with the City, constitute the administrative county of London, are enumerated in the table of areas in the appendix to this work, where information on various points connected with the government of these areas will be found.

Before passing to the Local Government Act, 1894, the next Act substantially affecting the system of London government introduced by the Metropolis Management Act, 1855, the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), calls for passing mention. That Act consolidated with amendments much of the earlier statute law dealing with sanitation in force in London, and gave the name of "sanitary authorities" to the authorities charged with its execution; namely, the administrative vestries and district boards, the local board of health of Woolwich, and certain authorities in

the City and in the places mentioned in Schedule C to the Metropolis Management Act, 1855. Since that Act, enactments conferring powers on the administrative vestries and district boards have generally conferred such powers on them under the name of "sanitary authorities."

The Local Government Act, 1894 (56 & 57 Vict. c. 73), completely altered the law as to the qualification of vestrymen—as the members of elective vestries are called—in London; as to the election of vestrymen, both as regards the qualification of the voters and the method of conducting the election; and as to certain other matters more or less connected with the election of vestrymen.

The provisions of the Act of 1894 in these respects are extended to the councillors of the metropolitan boroughs by the London Government Act, 1899; and in view of the outline of the law relating to the election and qualification of councillors of a metropolitan borough, and matters connected therewith, given below, it is unnecessary to refer to them further at this point.

The provisions of the Act of 1894 above-mentioned extend also to the local board of health of Woolwich.

The Act also altered the qualification for membership of a district board, but it did not alter the system of electing those boards.

No new powers were directly conferred on the vestries or district boards by the Act of 1894, but sect. 33 of that Act, it should be mentioned, contains provisions which the Local Government Board have interpreted as enabling them to confer important parochial powers on elective vestries, whether administrative vestries or not, and also to transfer to such vestries the functions of burial boards and of boards of commissioners under the Baths and Washhouses Acts and the Public Libraries Acts (see pp. 143–145).

The London  
Government  
Act.

The main object of the London Government Act, 1899, is to substitute for the numerous elective vestries and district boards a smaller number of local authorities of greater dignity and with wider powers.

To this end the administrative county of London, exclusive of the City and slightly altered in area, is to be divided into twenty-eight "metropolitan boroughs," for each of which a "borough council" is to be established.

Subject to certain exceptions, these borough councils will have concentrated in them the functions of the existing administrative vestries and district boards; of the existing elective vestries other than administrative



vestries; of the existing burial boards, and boards of commissioners under the Baths and Washhouses Acts and the Public Libraries Acts; and of the overseers of the poor. They will also have certain additional functions attached to them by the Act directly.

It should be observed that the metropolitan boroughs and the councils of those boroughs will not be boroughs and borough councils in the ordinary sense of these expressions, and that enactments relating to boroughs and borough councils will not extend to the metropolitan boroughs and the metropolitan borough councils unless it is expressly so provided (see sect. 31).

The Act will not come into full operation for some considerable time.

Many of its provisions were expressed to operate as from the "appointed day," that is to say, the day when the first members of the borough councils come into office, or such other day, not being more than six months earlier or later, as the Lord President of the Privy Council may appoint either generally or specially. (Sect. 33 (1).)

Coming into  
operation of  
Act. Ap-  
pointed day.

The first elections of borough councillors under the Act are to be held on November 1, 1900, or on such later day, as soon as practicable thereafter, as may be fixed by the Lord President of the Council. (Sect. 3 (1).)

For most purposes accordingly the "appointed day" cannot be earlier than some day in November, 1900, and the Act cannot come into full operation before that time.

In the meantime, as will be seen, much remains to be done by means of Orders in Council, Schemes, and Orders of the Local Government Board, to complete the legislation contained in the Act itself.

The areas which are to form the metropolitan boroughs are enumerated in the first schedule to the Act. But these areas may, and in some cases must, be to some extent altered, under the provisions of the Act as to boundaries, so that the schedule can only be regarded as defining the areas of the several boroughs in a general way. The provisions of the Act as to alterations of boundary which will or may affect the boundaries of the metropolitan boroughs, and which are contained in sects. 1, 17, 18, 20 and 21, will be discussed later.

The metro-  
politan  
boroughs.

As to the existing position in the matter of local government of the areas mentioned in the first schedule, reference may be made to the Table of Areas in the Appendix to this work. It will be seen that the first

fifteen borough areas mentioned in the schedule are at present parishes under administrative vestries, and that two more, namely, the district of the Poplar Board of Works and the district of the Wandsworth Board of Works, are at present districts under district boards. None of the remaining eleven areas is co-terminous with an area at present subject to a single administrative vestry or a single district board.

The areas of the several boroughs are to be actually defined by Order in Council, and before any Order in Council forming an area into a borough is made the draft of the Order is to be laid before Parliament, and either House may thereupon present an address to Her Majesty against the draft or any part of it, in which case no further proceedings are to be taken on that draft and a new draft will have to be prepared. (See sects. 1, 15 (2).) The areas of the boroughs cannot therefore be finally settled before the next session of Parliament.

Each borough is to be given an appropriate name by Order in Council. (Sect. 27 (1).)

The borough  
councils.

The council of a metropolitan borough will consist of a mayor, aldermen, and councillors. (See sect. 2 (1), p. 5.)

The borough will be divided into wards, a certain number of councillors being elected for each ward. The total number of councillors is in no case to exceed sixty, and the number assigned to each ward is to be divisible by three. (See sect. 2 (2), and note, p. 5.)

The Act contains scarcely any direct provisions with reference to the election of borough councillors or cognate matters; but with reference to these matters provides that the existing law applicable to members of administrative vestries shall apply. (Sect. 2 (5), p. 18.)

The councillors for each ward will be elected by the persons registered as "parochial electors" in respect of qualifications in the ward. The register of parochial electors consists of the Parliamentary register of electors and the local government register of electors taken together, the latter register including the names of married women, who, though disentitled to vote at elections of county councillors, are, if possessed of the necessary qualification, entitled to be placed on the register of local government electors for the purpose of voting as parochial electors. Consequently, putting it broadly, every person entitled to vote at a Parliamentary election in respect of a qualification in London, whether as owner,

occupier, or lodger, and every person entitled to vote at an election of London County Councillors will be entitled to vote at elections of borough councillors for the ward in which the property in respect of which he or she is qualified is situate; and in addition a certain number of married women will have votes. (See the note to sect. 2 (5), pp. 18-21.)

Elections of borough councillors will be conducted under rules framed by the Local Government Board; and the Ballot Act, and certain other enactments primarily relating to municipal elections and matters connected therewith, will, subject to modifications made by such rules, apply to the elections and to the acceptance of office by the councillors, their re-eligibility for office, their resignation of office, and the filling of casual vacancies among them. (See the note to sect. 2 (5), pp. 35-45.)

The Local Government Board will doubtless issue an order containing rules regulating the elections of the councillors. Should they not do so, their existing order regulating elections of London vestrymen, of which a general account will be found in the note to sect. 2 (5) (pp. 37-42), would apply. And any order they may issue will doubtless follow closely the lines of that existing order.

The Local Government Board are empowered, in pursuance of a resolution of a borough council passed by a special majority, to order that the councillors of the borough shall all retire together every third year, and may in pursuance of a like resolution of the council rescind any such order. Save where such an order is in force, one-third of the councillors will retire each year. In either case the tenure of office of the councillors will normally be three years. (See sect. 2 (8) and note, pp. 69, 70.)

To be qualified to be elected or to be a councillor, a person must either be a parochial elector of some parish in the borough, or have resided in the borough during the whole of the twelve months preceding the election. (See the note to sect. 2 (5), pp. 21-26.)

With reference to the mayor and aldermen, the Act applies the provisions of the Local Government Act, 1888, relating to the chairman and aldermen of a county council, and thus in effect indirectly applies the provisions of the Municipal Corporations Act, 1882, relating to the mayor and aldermen of a municipal borough,

subject to some modifications. (Sect. 2 (4), and note, pp. 6, 7.)

The aldermen will be elected by the council either from among the councillors or from outside the council, the qualification for election from outside the council being it seems practically the same as in the case of a councillor. (See the note to sect. 2 (4), pp. 7-14.)

One half of the total number of aldermen will go out of office every three years, their places being then re-filled. Hence the term of office of an alderman will normally be six years. (See the note to sect. 2 (4), p. 16.)

The number of aldermen will be one-sixth of the number of councillors. (Sect. 2 (3).)

The mayor will be elected by the council either from among their own members or from outside the council, the qualification for election from outside the council being apparently the same as in the case of a councillor. (See the note to sect. 2 (4), pp. 7-12.)

The term of office of the mayor will be one year. (See the note to sect. 2 (4), p. 16.)

The mayor will be a justice of the peace for the county of London. (See sect. 24 and note, pp. 168, 169.)

He may be voted remuneration by the council (see the note to sect. 2 (4), pp. 17, 18).

Women will not be eligible for membership of a borough council (sect. 2 (1)); and there are other disqualifications. (See the notes to sect. 2 (4, 5), pp. 9, 26-35.)

The first elections of borough councillors are to be held on November 1, 1900, or such later day, as soon as practicable thereafter, as may be fixed by the Lord President of the Council, who is also to fix a corresponding day for the elections of mayor and aldermen. (Sect. 3 (1).)

In subsequent years the elections of borough councillors will be held on November 1, or, if that day is a Sunday, on November 2, and those of mayor and aldermen on November 9, or, if that day is a Sunday, on November 10. (Sect. 3 (2, 3).)

The alterations in the dates for the signing and coming into operation of the revised lists of voters necessary to allow of the elections being held on these dates are made. (Sects. 3 (4), 27 (3).)

The dates for the retirement of the first aldermen and councillors are to be fixed by Order in Council, and it is further provided that such an Order shall give such

directions as to the first meeting of the borough councils, and make such other temporary modifications of the provisions of the Act, as may appear to Her Majesty to be necessary or proper for making these provisions applicable in the case of the first constitution of a borough council. (Sect. 27 (1).)

The proceedings of the borough councils will be mainly governed by the law applicable to the proceedings of administrative vestries (see sect. 2 (5) and note, pp. 18, 65-69). New provisions of some elaboration are however made as to the conduct of financial businesses (sects. 8 (3), 9); and the councils are given powers, in excess of those at present enjoyed by administrative vestries, of delegating powers to committees (sect. 8 (1, 2, 4)). It is also expressly provided that the quorum of the council shall be one-third of the whole number of the council (sect. 2 (6)).

The accounts of the borough councils are to be made up and audited like those of the London County Council. This provision effects a very important change in the law, since it will subject the accounts of the borough councils to an efficient audit by the auditors appointed by the Local Government Board, whereas the existing provisions for the audit of the accounts of administrative vestries and district boards are of a very inadequate character. (See sect. 14 and note, pp. 126-136.)

The provisions of the Act concerning the powers and duties of the borough councils, to which attention must now be directed, are to a large extent of a skeleton character, matters of detail being left to be dealt with by "schemes" which are to be prepared by commissioners appointed under the Act, and are to be ultimately confirmed by Order in Council, or in some cases possibly by Act of Parliament. The provisions with reference to such schemes will be referred to later.

Powers and  
duties of  
borough  
councils.

The powers, duties, property, and liabilities of the elective vestries, whether administrative vestries or not, and of the district boards, are as from the appointed day transferred by the Act to the borough councils, and the elective vestries and district boards are as from that day abolished (see sect. 4 (1)). There are, however, savings with reference to affairs of the Church and Church property which will be mentioned later.

In cases where the area of a metropolitan borough is co-extensive with the area under the jurisdiction of an administrative vestry or district board this transfer will

give rise to very little difficulty or dislocation of business. In other cases adjustments of various kinds may be necessary. Such adjustments will be made by scheme.

It may be mentioned that where a borough council are desirous of borrowing under the powers transferred to them from the administrative vestries and district boards, and the London County Council withhold their sanction to the loan, or attach conditions to their sanction, the borough council are to have a right of appeal to the Local Government Board. (Sect. 4 (1).)

The borough council are also to execute the adoptive Acts, namely, the Baths and Washhouses Acts, the Burial Acts, and the Public Libraries Acts, wherever these Acts are in force. And where there is any existing separate authority under any of these Acts their functions are to be transferred by scheme to the borough council. Provisions are also made as to the adoption of these Acts in the future, but these provisions are of an imperfect character and give rise to some very difficult questions (see sect. 4 (2, 4) and notes, pp. 76-85).

A few minor powers of the London County Council are transferred to the borough councils by the Act. And the Local Government Board are empowered, on the application of the London County Council and of the majority of the borough councils, to make a provisional order, which will require confirmation by Parliament, for the transfer to *all* the borough councils of any power exercisable by the County Council or for the transfer to the County Council of any power exercisable by the borough councils (sect. 5 (1, 3)).

Where any power or duty is transferred by or under the Act from the London County Council to a borough council, or from a borough council to the London County Council, the borough council or the County Council, as the case may be, are to defray as part of their ordinary expense the expenses of and incidental to the power or duty in question, but the one council is to make a contribution to the other in respect of those expenses (sect. 7).

Besides the powers and duties that will thus attach to the borough councils by transfer from other authorities, and those that will attach to them in their capacity of overseers, as to which some observations will be made later, the Act confers and imposes certain additional powers and duties on them.

Some of these additional powers and duties are

conferred and imposed on the borough councils in the usual way by express enactment in the body of the Act (see sect. 6). But others of these powers and duties are conferred and imposed on the borough council in a somewhat curious way. It is provided that the powers of the London County Council under the enactments mentioned in Part II. of the Second Schedule to the Act may, subject to the conditions mentioned in that schedule, be exercised also by each borough council as respects their borough (sect. 5 (2)); and in Part II. of the Second Schedule the powers of the London County Council in question are tabulated. A brief general account of the powers thus conferred on the borough councils will be found in the note to sect. 5 (2), pp. 86, 87.

The remaining provisions of the Act under which Overseers and the borough councils will have powers and duties are rates, those relating to rates and to the exercise of the functions of overseers.

The council of each borough are to "be the overseers of every parish within their borough," and are to appoint such officers as may be required to assist in the transaction of the business, and to defray the expenses of and incidental to the performance of the duties, of overseers (sect. 11 (1)). But the clerk of the council, who is to be called the town clerk (sect. 4 (1)), is to have the powers and duties and be subject to the liabilities of overseers with respect to the preparation of the lists of voters and of the jury lists (sect. 11 (1)).

The churchwardens are to cease to be *ex officio* overseers, and provision is made for cases where property is vested in the churchwardens and overseers or in the overseers alone, and for cases where the overseers are trustees of a charity (sect. 23 (3, 4)).

Practically the powers and duties of the borough council as overseers will relate almost exclusively to the preparation of valuation lists and the levy of rates.

No alteration is made in the functions of the overseers with reference to the preparation of valuation lists, and these functions will be discharged by the borough councils as they have in the past been discharged by the overseers. An alteration in the law is, however, made as to the appointment of assessment committees. It is provided that where the whole of a poor law union is within a borough the assessment committee shall be appointed by the borough council instead of by the guardians, and

that where the borough comprises the whole of two or more unions, the council shall appoint only one assessment committee for those unions (sect. 13). In cases where the assessment committee is now appointed by the vestry, a borough council will appoint that committee not by virtue of sect. 13 but as successors of the vestry under sect. 4 (1).

The provisions of sect. 13 seem calculated to give rise to considerable difficulty and friction, since an assessment committee appointed by a borough council under that section, unlike an assessment committee appointed by a borough council as successors of a vestry, will apparently be subject in many respects to the control of the board of guardians (see the note to sect. 13, pp. 124-126).

The rating powers of the borough councils will differ very considerably from those at present vested in the overseers.

By sect. 10 of the Act it is provided as follows:—

“(1.) A scheme under this Act shall provide for all the expenses of a borough council being paid out of the general rate, and for the discontinuance of a separate sewers rate and separate lighting rate, but shall make provision for protecting the interests of owners and occupiers of any hereditament which is exempt from any rate or liable to be assessed thereto at a less amount than other hereditaments.

“(2.) After the appointed day the general rate and the poor rate shall be assessed, made, and levied together by the borough council as one rate, which shall be termed the general rate, and shall be assessed, made, collected, and levied, as if it were the poor rate, and all enactments applying or referring to the poor rate shall, subject to the provisions of this Act as to audit, be construed as applying or referring also to the general rate.

“(3.) Where a borough comprises more than one parish, the amount to be raised to meet the expenses of the borough council, or other sums payable as part of those expenses, shall, subject to any provision required for the adjustment of local burdens, be divided between the parishes in proportion to their rateable value.

“(4.) Where any of the adoptive Acts, or any local or other Act, does not extend to the whole borough, any rate required to meet the expenses incurred under the Act shall, subject to the provisions of any scheme under this Act, be levied together with, and as an additional



item of, the general rate over the area to which the Act extends."

Most of the enactments at present regulating the levy of the general rate, the sewers rate, and the lighting rate are, moreover, expressly repealed (sect 35 (2) and Schedule III.).

It is further provided that after the appointed day every precept issued by any authority in London for the purpose of obtaining money which is ultimately to be raised out of a rate within a borough, other than a precept sent to guardians by the Local Government Board, or by a body containing representatives elected by the guardians, shall be sent to the borough council and shall be executed by them (sect. 11 (2)).

The practical working of these provisions as to rates will depend in great measure on the scheme or schemes framed under sect. 10 (1). Broadly the idea seems to be that the various separate rates at present levied for the expenses of the administrative vestries and district boards, and the poor rate, shall be amalgamated into a single rate, to which the incidents of the poor rate shall attach, and which shall be levied by the borough council; but that the several portions of the rate shall be kept so far distinct as is found necessary in order to preserve existing privileges and exemptions (see the note to sect. 10, pp. 114-122).

There is a special saving, it may be mentioned, as to the rights of tenants against their landlords in respect of the sewers rate (sect. 12).

Provision is also made under which demand notes for rates are to contain a mine of information presented in a form approved by the Local Government Board (sect. 11 (3)).

The Act contains provisions which will enable very considerable alterations in the boundaries of local areas to be made.

In the first place it is provided that the areas mentioned in the first schedule shall be formed into metropolitan boroughs "subject, nevertheless, to such alteration of area as may be required to give effect to the provisions of this Act, and subject also to such adjustment of boundaries as may appear to Her Majesty in Council expedient for simplification or convenience of administration" (sect. 1).

Hence there will be power, apart from the specific provisions of the Act relating to boundaries, to adjust

boundaries for purposes of convenience, though the extent of this power is left somewhat doubtful (see the note to sect. 1, p. 5).

The specific provisions of the Act as to boundaries are contained in sects. 16, 17, 18, 20, and 21.

Sect. 17 provides as follows:—

“(1) Every part of the administrative county of London outside the City shall be situate in some borough and some parish, and a parish shall not be situate in more than one borough, or partly in a borough and partly in the City.

“(2) An Order in Council under this Act may divide a parish or place into parts for the purpose of giving effect to this section or of constituting a satisfactory area for a borough, and, unless otherwise provided by the Order or by a scheme under this Act, each part shall be a separate parish.”

These provisions give wide powers to divide parishes by Order in Council.

Sect. 18 is concerned with cases where part of a parish is wholly detached from the principal part of the parish, and requires that such detached parts of parishes, with certain exceptions, shall be dealt with by Order in Council.

Where the parish is wholly in London, the detached part is, subject to certain exceptions, to be annexed to or divided between any of the boroughs which it adjoins, and to be either constituted a separate parish or annexed to or divided between any of the parishes it adjoins.

Where the principal part of the parish is outside London and the detached part within London, the detached part is to become part of the county of London, and to be dealt with accordingly; and provision is made (with the object it is understood of meeting the case of South Hornsey) that where a detached part of a parish in an urban district adjoining London so becomes part of London the whole urban district may be made part of the county of London.

Where the principal part of the parish is in London and the detached part without, the detached part is to be made part of the county or counties surrounding it, and the necessary consequential arrangements are to be made.

By sect. 20 special powers are given for dealing by Order in Council with the hamlet of Penge. The hamlet may either be added to the borough of Lewisham

or of Camberwell, or be separated from the county of London, and made part of either Surrey or Kent; and the necessary consequential arrangements may be made.

Under sect. 21 Kensington Palace may be detached from the borough of Westminster and added to the borough of Kensington.

Parish boundaries may be altered not only by Order in Council under the provisions above mentioned, but also by scheme, the only restriction being that parishes in different unions are not to be united without the consent of the Local Government Board (see sect. 16 (1, c), and notes, pp. 139, 141-143).

Any powers and duties of a vestry which relate to Church the affairs of the church, and any interest of a vestry in affairs. any church property, are excepted from the transfer of the functions and property of the elective vestries to the borough councils; and it is provided that a scheme under the Act shall provide for vesting any such powers and duties in the inhabitants of some parish or ecclesiastical district, and for vesting any such interest in the incumbent and churchwardens or one or some of them, and for the collection of any rate connected with a church or an incumbent by the churchwardens, or by officers appointed for the purpose. There is, however, a special provision with reference to buildings in churchyards (sect. 23 (1, 2)).

Provisions as to charities are contained in sect. 23 (4-6) Charities. of the Act. These provisions, and the provisions that may be made with reference to charities by scheme, are discussed somewhat fully in the note to that section, pp. 163-168.

The clerk of the council of a metropolitan borough is Officers. to be called the town clerk, and certain duties, of which the most important relate to the registration of electors and the preparation of jury lists, are imposed on him (sects. 4 (1), 11 (1)); and provision is made for the appointment of a deputy town clerk to act during the illness or absence of the town clerk (sect. 25).

The borough council are also empowered to appoint officers to assist in the transaction of the business of overseers (sect. 11 (1)).

Otherwise the Act does not expressly confer any new power of appointing officers on the borough councils. Nor does it contain any provision as to the tenure of office or obligations of officers appointed by a borough council. The absence of any provisions of the kind gives

rise to questions of considerable difficulty, some of which are discussed in the note to sect. 30 (pp. 177-186).

The provisions of the Act as to existing officers, which are contained in sect. 30, and are somewhat fully discussed in the note to that section (pp. 177-192), are in some respects difficult to understand. It is, however, provided that a scheme under the Act may make such provisions as may appear necessary for carrying the section into effect; and it is accordingly possible that the difficulties that might arise under the section as it stands will, at all events to some extent, be removed by a scheme or schemes.

Briefly, the provisions of sect. 30 are as follows:—

The officers of the authorities whose powers and duties are transferred to the borough councils, and also the assistant overseers, rate collectors, and other officers employed in the performance of the duties of overseers, are to become officers of the borough council.

Officers who were already in office on February 24, 1899, and remained in office at the passing of the Act, will, if they continue to hold office under the borough councils, hold such office on the same tenure and on the same conditions as hitherto. And provisions of the usual character are made for the payment of compensation to any such officer who suffers pecuniary loss in consequence of the Act.

A borough council may abolish the office of any officer transferred to them whose office they deem unnecessary; and an officer required to perform duties which are not analogous to his present duties, or which are an unreasonable addition to his present duties, may relinquish his office. And it is expressly provided that an officer whose office is thus abolished, or who thus relinquishes his office, shall be entitled to compensation.

Provision may also be made by scheme for the payment of compensation to any officer who sustains pecuniary loss in consequence of the Act, although he is not transferred to a borough council, and although he is not an officer of an authority whose powers and duties are transferred by or under the Act.

Registration  
of electors.

It has already been mentioned that the town clerk in each borough is to have the duties of the overseers with reference to the preparation of the lists of voters (sect. 11 (1)). He is also to have the duties of town clerk under the Acts relating to the registration of electors (sect. 4 (1)). And an Order in Council may,

and doubtless will, be made adapting the enactments relating to the registration of electors accordingly (sect. 27 (2)).

In 1900 and in subsequent years the revised lists of voters in the administrative county of London outside the City are to be signed before October 20, and are to come into operation as the register for the purpose of borough elections on November 1 (sects. 3 (4), 27 (3)).

The existing members of elective vestries and district boards and the existing auditors and overseers are continued in office till the day on which the first borough councillors elected under the Act come into office, and on that day are to go out of office. And, except for the purpose of filling casual vacancies, no further election or appointment is to be held or made (sect. 27 (4)).

Continuance  
in office of  
members of  
existing  
authorities,  
&c.

The transitory provisions contained in sects. 85-88 of the Local Government Act, 1894, are subject to the provisions of any scheme, and with such adaptations as may be made by Order in Council, to apply in the case of boroughs and borough councils under the Act (sect. 33 (2)).

The sections in question contain savings for the levy, &c., of current rates, the audit of current accounts, pending legal proceedings, existing securities, debts, bye-laws, and contracts, and like matters.

Provision is to be made by scheme for placing Woolwich under the general law applying to metropolitan boroughs; for the application of metropolitan enactments in Woolwich; and for the repeal as regards Woolwich of enactments not applying to London (sect. 19 (1)).

Woolwich.

Subject to the provisions of such a scheme and to certain savings, the Act is to apply to Woolwich as if the local board of health were an administrative vestry (sect. 19 (2, 3)).

The internal government of the City is, as has been mentioned, left unaffected by the Act. It is, however, provided that the Local Government Board, on the joint application of the London County Council and the Common Council of the City, may make a provisional order, requiring confirmation by Parliament, transferring any power from the County Council to the Common Council or *vice versa* (sect. 5 (4)), and provisions are made with reference to the expenses connected with the exercise of powers so transferred (sect. 7).

City of  
London.

It appears also to be intended that the powers

exercisable by the Corporation of the City or the Court of Aldermen of the City, or their officers, in the ancient borough of Southwark shall be dealt with by scheme under the Act (see sect. 16 (3, a)).

Orders and  
schemes.

Much, as has been seen, is to be effected under the Act by Orders in Council and by schemes. Lists of the subject matters with reference to which such orders and schemes are to be made will be found in the notes to sects. 15 and 16, pp. 137, 140.

By sect. 15 (1) provision is made for referring to a Committee of the Privy Council the appointment of Commissioners to prepare such orders and schemes as are required for carrying the Act into effect, and the Committee are empowered to settle the orders and schemes, and to employ such persons as they may deem necessary for the purposes of the Act. Under this clause certain members of the Privy Council have been constituted a Committee for the purposes of the Act and Commissioners have been appointed (see p. 137).

The Commissioners are given for the purposes of their powers and duties under the Act like powers with inspectors of the Local Government Board (sect. 15 (3)).

The expenses of the Committee of the Privy Council under the Act are to be defrayed by the London County Council (sect. 15 (4)).

Provisions of the widest possible character as to the matters that may be provided for by scheme are contained in sect. 16 (1, 2). Indeed, but for one or two express savings in sub-section (1) of that section, it would be difficult to specify any matter in any reasonable sense connected with the purposes of the Act, with reference to which provision could not be made by scheme, though it is of course impossible to say how boldly the Committee of the Privy Council and the Commissioners may be disposed to exercise their powers.

By sect. 16 (3, 4) the provisions of the Municipal Corporations Act, 1882, as to the procedure in relation to the preparation of schemes in connection with the incorporation of new municipal boroughs are applied with some modification to schemes under the London Government Act. The provisions of the Municipal Corporations Act in this respect will be found at length in the note to sect. 16 (3) at pp. 149-152, and at p. 149 a short summary of their effect is given.

It will suffice to state here that provisions are made under which local authorities and persons affected will

have an opportunity of making objections to any draft scheme, and that there will be an opportunity of presenting a petition against the scheme, in which case the scheme will require confirmation by Parliament.

In conclusion it may be added, in order to complete the foregoing summary of the provisions of the Act, that the Act contains provisions as to the conduct of proceedings by the Local Government Board (sect. 28 (2, 3)), and as to the procedure with reference to the making of provisional orders (sect. 28 (1)); provisions for the alteration of the wards of a metropolitan borough (sect. 26); provisions for the summary determination by the High Court of questions as to the transfer of powers, duties, and property (sect. 29); and savings with reference to the London (Equalisation of Rates) Act, 1894, the jurisdiction of the London School Board, and other matters (sect. 31).

Miscellaneous.





THE

# LONDON GOVERNMENT ACT, 1899.

62 & 63 VICT. c. 14.

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*An Act to make better provision for Local Government in London.*  
[13th July, 1899.]

BE it enacted by the Queen's most Excellent Majesty, 62 & 63 Vict. c. 14 s. 1.  
by and with the advice and consent of the Lords  
Spiritual and Temporal, and Commons, in this present  
Parliament assembled, and by the authority of the same,  
as follows :—

### *Establishment of Metropolitan Boroughs.*

**Sect. 1.** The whole of the administrative county of London, exclusive of the City of London, shall be divided into metropolitan boroughs (in this Act referred to as boroughs), and for that purpose it shall be lawful for Her Majesty by Order in Council, subject to and in accordance with this Act, to form each of the areas mentioned in the First Schedule to this Act into a separate borough, subject, nevertheless, to such alteration of area as may be required to give effect to the provisions of this Act, and subject also to such adjustment of boundaries as may appear to Her Majesty in Council expedient for simplification or convenience of administration, and to establish and incorporate a council for each of the boroughs so formed.

Establishment of metropolitan boroughs in London.

**Note.—Administrative County of London.**—The administrative County of London is the area for which the London County Council is elected. It is in effect defined in the Local Government Act, 1888 (51 & 52 Vict. c. 41), as consisting of the City of London and the parishes and places mentioned in Schedules A, B, and C to the Metropolis Management Act, 1855 (18 & 19 Vict. c. 126), as amended by subsequent Acts. See sect. 40 (1) of the Local Government Act,

62 & 63 Vict. 1888, and the definitions of "administrative county" and "Metropolis" c. 14, s. 1, n. in sect. 100 of that Act.

The table of areas in the appendix to this work shows the areas comprised in the schedules to the Metropolis Management Act, 1855, as amended by subsequent Acts.

It is important to observe the distinction between the expressions the "administrative county of London" and "the county of London." The county of London consists of those parts of the administrative county of London which were formerly in Middlesex, Surrey, and Kent, and which were formed into a separate county for almost all non-administrative purposes by sect. 40 (2) of the Local Government Act, 1888. The county of London may of course be described as the administrative county of London less the City. But since the expression City has not always precisely the same meaning, it does not necessarily follow that the area described in the present sub-section as "the administrative county of London exclusive of the City" is exactly identical with "the county of London." The exact meaning of the City in the present sub-section is considered below.

Further as to the administrative county of London, the county of London, and the areas comprised in them, see the introduction, and the appendix to this work.

**City of London.**—By sect. 22, the Inner and Middle Temples are for the purposes of the present Act to be deemed to be within the City of London. But, except to this extent, the expression "City of London" is not defined in the present Act. There is consequently some doubt as to the exact area that is to be taken as the City for the purposes of the present section.

The choice seems to be between the area locally within the traditional boundaries of the City (*plus* the Inner and Middle Temples or so much of these areas as is not within the traditional boundaries of the City), on the one hand, and the area defined as the City for the purpose of the Metropolis Management Acts (*plus* the Inner and Middle Temples) on the other.

The former area, it may be observed, appears to be identical with that forming the City for the purpose of the election of members of Parliament, which area is defined by the Parliamentary Boundaries Act, 1832 (2 & 3 Will. IV. c. 64, Sched. O, 22), as "the whole space contained within the exterior boundaries of the City of London, including the Inner Temple and the Middle Temple."

With reference to the ancient boundaries of the City the following extracts from the second report of the Commissioners on Municipal Corporations of 1835 (issued in 1837) may be quoted:—

"The City of London, including the liberties, or the districts into which the municipal franchises and privileges extend, is distinguished into two portions: viz., London within the walls, and London without the walls, or the liberties. The origin of this distinction or division is obvious, but it now exists only in name, and therefore in this report the term 'City' is employed to designate the whole of the municipal territory comprehended within the outer frontier or boundary of the liberties. . . . Both portions of the City, London within the walls, and London without the walls, are under the like municipal jurisdiction, and residence in either confers the same municipal privileges. . . . The whole of the ancient London Bridge was within the City, and it is maintained by the City officers that the present structure retains the rights of the ancient bridge. A small portion of ground upon which about six houses recently stood, at the south end of old London

Bridge on the Surrey shore, and called the 'Bridge Foot,' is part of 62 & 63 Vict. the City as the bridge itself was, and was then connected with the c. 14, s. 1, n. City by the bridge. The new bridge, however, does not quite reach it, being somewhat higher up the river. But except as to this small plot of ground, which can scarcely be said to be an exception, no portion of the City of London is separated from the main body of the City. The municipal territory is continuous. . . .

"The boundary between the liberties and the county of Middlesex, with few exceptions, is stated to be accurately known, and not subject to dispute. . . . It does not appear that the civic authorities perambulate the boundary of the City and City liberties, or take any pains to preserve evidence of it, nor are they in possession of any map of their municipal territory and its divisions grounded upon actual survey. . . .

"The boundary between the City and the precinct or the jurisdiction of the Constable of the Tower was anciently a subject of much contest. . . . But the only point now in dispute between the City and the Constable of the Tower relates to the Tower stairs. . . .

"London anciently contained within it various sokes, jurisdictions, or franchises, which, though locally included within the City boundary or City liberties, were exempted from the municipal jurisdiction, either wholly or in a greater or lesser degree, and which have since been united to the municipal territory.

"It is unnecessary to enumerate those districts which, whether by grant or usage, have become united to the City for all purposes; but there are some portions, formerly privileged places or exempt jurisdictions, and which yet are or claim to be partially or wholly exempted from various points of the City's jurisdiction.

"The districts so circumstanced are the following:—[The report here refers to the precincts of Creede Church-street or the Duke's Place, St. Bartholomew the Great, St. Bartholomew the Less, Blackfriars, and Whitefriars.]

"The precinct or liberty of St. Martin's-le-Grand was formerly a liberty belonging to the Dean and Chapter of Westminster, and considered as a part of the City of Westminster and county of Middlesex; but it has since been united to the City by the Act for the erection of the new Post Office, 55 Geo. III. c. xci. s. 71. . . .

"Dorset Court or Dorset Gardens, the site of the ancient palace of the Bishop of Salisbury, is asserted by the inhabitants to be no part of the municipal territory, but the City does not acknowledge the exemption, and legal proceedings are now pending in relation to the question.

"A portion of the buildings of the Tower, and portions of the liberty of the Tower, are included within the local boundaries of the City, the ancient wall of the City passing through the Tower. But the whole of the Tower and of the Tower liberty is practically excluded from the City jurisdiction.

"The following Inns of Court and Chancery; viz., the Inner Temple; Barnard's Inn; Serjeants' Inn, Chancery Lane; Clifford's Inn; part of the Middle Temple; Staple Inn; Furnival's Inn;<sup>1</sup> and Serjeants' Inn, Fleet Street (considered by some as part of the Inner Temple), are all locally included within the boundaries of the City; but they are all considered as being out of the municipal territory, and excepted from the City jurisdiction, and excluded from its franchises.

(1) Parts only of Staple Inn and Furnival's Inn appear now to be regarded as within the ancient boundaries of the City. See the appendix to this work.

62 & 63 Vict. c. 14, s. 1, n. though those portions of Staple Inn and Furnival's Inn, which abut or open upon Holborn, pay certain of the City rates. Ely Place, which is included within the City boundary, is wholly exempted from such rates.

"Notwithstanding the foregoing total or partial exemptions, it is alleged that the process of the City Courts runs into all the before mentioned districts, the two Temples only excepted. Their rights, however, are in many respects obscure. Several of those districts, namely, Duke's Place, St. Bartholomew the Great, St. Bartholomew the Less, Blackfriars, Whitefriars, St. Martin's-le-Grand, Dorset Court, and Ely Place, practically compose a part of the City. All the above mentioned precincts, and all other places within the exterior boundary line of the liberties of the City of London, have been included in it by the Reform Act,<sup>1</sup> for the purposes of parliamentary representation, but no other extension of the civic limits was made by that Act."

The definition of City in the Metropolis Management Act, 1855, to which allusion has already been made, is contained in sect. 250 of that Act, whereby for the purposes of that Act, unless the context otherwise requires, "the City of London shall be deemed to include all parts now within the jurisdiction of the Commissioners of Sewers for the City of London."

The City Commissioners of Sewers had jurisdiction over the City as defined by sect. 262 of the City of London Sewers Act, 1848 (11 & 12 Vict. c. clxiii.), in these terms:—"The word 'City' shall mean the City of London and the liberties thereof, and shall include such parts of Holborn, the Minories, and Aldersgate Street as are or have been usually treated as being within the liberties of the City, and the courts and alleys leading into the same or communicating therewith, and also the north side of Eldon Street, formerly called Broker Row, Moor-fields, and the courts and alleys leading into the same or communicating therewith, and all precincts and places within the City of London or the liberties thereof."

The City Commissioners of Sewers were abolished, and their functions transferred to the Common Council of the City by the City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii.); but no alteration was made in the area within which the powers formerly vested in the Commissioners of Sewers are exercisable.

It appears from the table of areas in the appendix to this work that the area under the jurisdiction of the Common Council, as successors of the City Commissioners of Sewers, comprises the following areas outside the Parliamentary boundaries of the City:—a small part of the parish of Shoreditch; a small part of the Minories; part of Saffron Hill; and parts of Glasshouse Yard. On the other hand, it appears from that table that the parts of Furnival's Inn and Staple Inn, which are within the Parliamentary boundary of the City, are not regarded as having been subject to the City Commissioners of Sewers.

*Primâ facie*, no doubt, the expression "the City of London," in the absence of definition, means the area within the traditional boundaries of the City. But the slightly different area defined as the City in the Metropolis Management Act, 1855, has been treated as the City for the purposes of so many enactments dealing with local government, that it is quite open to argument that the expression City in the present Act must be regarded as referring to the latter area. It seems clear that the ambiguity in the meaning of the expression "City

(1) This was, in point of fact, effected not actually by the Reform Act, but by a later Act passed to carry the Reform Act into effect. See *ante*, p. 2.

of London" was forgotten in drafting the present Act: though the 62 & 63 Vict. provisions of the present section as to alterations of boundary may c. 14, s. 1, n. be read as wide enough to authorize a rectification of the City boundaries, and thus to remove any difficulty arising from the doubt as to the precise area meant by the expression.

**Orders in Council.**—As to Orders in Council under the present Act, see sect. 15 and the note thereto.

**Alterations of Area.**—Specific provisions as to the alterations of area that are to be made by Order in Council in constituting the metropolitan boroughs are contained in sects. 17, 18, 20 and 21.

By the present section it appears that apart from these sections there may be an "adjustment of boundaries" for the purpose of simplification and convenience of administration.

The expression "adjustment of boundaries" is absolutely general. And it is by no means clear whether, under the present section, the power to make such adjustment of boundaries is confined to adjusting the boundaries between different metropolitan boroughs, or whether it extends to adjusting the boundaries between the metropolitan boroughs and the City, and between the metropolitan boroughs and areas outside the administrative county of London, and thus to authorize a rectification of the boundaries of the City and of the counties by which London is surrounded. Alterations in the last-mentioned boundaries may be made in specific cases under sects. 18 and 20.

**Sect. 2. (1.)** The council of each borough shall consist of a mayor, aldermen, and councillors. Constitution of borough councils. Provided that no woman shall be eligible for any such office.

**(2.)** An Order in Council under this Act shall fix the number of councillors, and fix the number and boundaries of the wards, and shall assign the number of councillors to each ward, that number being divisible by three, and regard being had to the rateable value as well as to the population of the wards.

**Note.—Orders in Council.**—As to Orders in Council under the present Act, see sect. 15 and the note thereto.

**Number of Councillors.**—Having regard to the next subsection, the maximum number of councillors for a metropolitan borough will be sixty; and the number must in all cases be divisible by six.

There is no provision for a subsequent alteration in the number of councillors for a borough.

**Wards, Apportionment of Councillors among Wards.**—The object of the provision that the number of councillors to be assigned to each ward shall be divisible by three, is to secure that where, as will generally be the case, the councillors retire annually by thirds, the number of councillors retiring in any one ward shall be the same each year. Where there is an odd number of wards in the borough it will be necessary, having regard to the next sub-section, that the number of councillors assigned to each ward shall be divisible by six.

62 & 63 Vict.  
c. 14. s. 2  
(2), n.

Provisions for alterations in the wards and in the apportionment of councillors between them are contained in sect. 26.

The larger parishes in London have been divided into wards for the purpose of the election of vestrymen, under powers given by the Metropolis Management Acts (18 & 19 Vict. c. 120, ss. 3, 4; 25 & 26 Vict. c. 102, s. 41) and the London County Council (General Powers) Acts, 1893 and 1895 (56 & 57 Vict. c. cxxi. s. 15; 58 & 59 Vict. c. cxxvii. s. 42). Such wards are in the great majority of cases co-terminous with wards into which such parishes have been divided for the purpose of the election of guardians, though there is no necessary connection between the wards for the two purposes. Formerly the power of dividing parishes into wards for the purpose of the election of guardians was in the Local Government Board exclusively (see 39 & 40 Vict. c. 61, s. 12); but county councils, including the London County Council, now have this power, concurrently, it seems, with the Local Government Board (see 56 & 57 Vict. c. 73, s. 60).

(3.) The number of aldermen shall be one-sixth of the number of councillors, and the total number of aldermen and councillors for each borough shall not exceed seventy.

51 & 52 Vict.  
c. 41.  
(4.) Except as otherwise provided by or under this Act, the provisions of the Local Government Act, 1888, with respect to the chairman of the county council and the county aldermen respectively shall apply to the mayor and aldermen of a metropolitan borough respectively, and for this purpose references in that Act to the chairman of the county council and to county aldermen shall be construed as references to the mayor and aldermen of the borough.

**Note.—Mayor and Aldermen.**—The provisions of the Local Government Act, 1888 (51 & 52 Vict. c. 41), with respect to the chairman of the county council and the county aldermen are chiefly contained in sects. 2 and 75 of that Act. Sect. 2 enacts that “the council of a county and the members thereof shall be constituted and elected and conduct their proceedings in like manner, and be in the like position in all respects, as the council of a borough divided into wards, subject nevertheless to the provisions of this Act, and in particular” to certain provisions contained in the section, which, so far as they relate to the chairman and county aldermen, will be referred to later. Sect. 75 provides that “for the purpose of the provisions of this Act with respect to county councils, and to the chairmen, members, committees, and officers of such councils, and otherwise for the purpose of carrying this Act into effect, the following portions of the Municipal Corporations Act, 1882—namely, Part II., Part III., Part IV. (as amended by the Municipal Elections (Corrupt Practices) Act, 1884<sup>1</sup>), sect. 124 in Part V., Part XII., Part XIII., the Second Schedule, Part II. and Part III. of the Third Schedule, and Part I. of the Eighth Schedule—shall, so far as the same are unrepealed and are consistent with the provisions of this Act, apply as if they were herein re-enacted with the enactments amending the same in such

(1) The proper short title of this Act (47 & 48 Vict. c. 70) is the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

terms and with such modifications as are necessary to make them 62 & 63 Vict. applicable to the said councils and their chairmen, members, committees, c. 14, s. 2 and officers, and to the other provisions of this Act." The section (4), u. then contains a number of provisos modifying the provisions of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), in question. Several of these provisos are repealed and replaced by the County Councils Election Act, 1891 (54 & 55 Vict. c. 68). The only provisions of that Act that will have any application to the mayor and aldermen of a metropolitan borough relate to acceptance of office.

It will be seen that, broadly speaking, the effect of the present sub-section is to apply to the mayor and aldermen of a metropolitan borough the provisions of the Municipal Corporations Act, 1882, with regard to the mayor and aldermen of a municipal borough, but to apply them, if the expression may be allowed, through the channel of the Local Government Act, 1888, and subject first to modifications introduced by that Act, and secondly, to modifications introduced by the present Act.

The law that will thus apply to the mayor and aldermen of a metropolitan borough may now be discussed in detail. It has not been thought necessary to refer to the Local Government Act, 1888, in connection with each provision of the Municipal Corporations Act, 1882, quoted or cited, the applicability of those provisions to the chairman of a county council and the county aldermen having been once explained.

**Qualification of Mayor and Aldermen.**—Sect. 14 of the Municipal Corporations Act, 1882, provides that "the aldermen shall be fit persons elected by the council," and that "a person shall not be qualified to be elected or to be an alderman unless he is a councillor or qualified to be a councillor." And sect. 15 (1) of the same Act provides that "the mayor shall be a fit person elected by the council from among the aldermen or councillors or persons qualified to be such." These provisions apply, *mutatis mutandis*, to county aldermen and the chairman of a county council, and will apply accordingly to the mayor and aldermen of a metropolitan borough.

It seems clear that any councillor of a metropolitan borough will be eligible for the office of alderman and any councillor or alderman for that of mayor.

It should be observed in this connection that by sect. 14 (4) of the Municipal Corporations Act, 1882, if a councillor is elected to and accepts the office of alderman he will thereby vacate his office of councillor. But it appears that a councillor or alderman elected to and accepting the office of mayor will not thereby vacate his existing office.

There is some little difficulty as to the qualification for the office of mayor or alderman, where it is proposed to elect the mayor or an alderman from outside the council.

In a municipal borough, as appears from the provisions of the Municipal Corporations Act, 1882, quoted above, the qualification for the office of mayor or alderman is the same as that for the office of councillor. To be qualified therefore a person must, under sect. 11 of that Act,<sup>1</sup> either

(1) Be enrolled and entitled to be enrolled as a burgess of the borough; or

(2) Being entitled to be so enrolled in all respects except that of

(1) The section is very clumsily expressed, but its effect is that stated in the text.

62 & 63 Vict.  
c. 14, s. 2  
(4), n.

residence, be resident beyond seven miles but within fifteen miles of the borough, be entered on a separate non-resident list, and be possessed of a certain property qualification.

These provisions are extended to the qualification for the office of county councillor, and therefore for that of chairman of a county council or county alderman, with the substitution of county elector for burgess, subject to the provision that "a person shall be qualified to be an alderman or councillor who, though not qualified in manner provided by the Municipal Corporations Act, 1882, as applied by this Act, is a peer owning property in the county or is registered as a parliamentary voter in respect of the ownership of property of whatever tenure situate in the county" (51 & 52 Vict. c. 41, s. 2 (2 b)), and subject also to provisions with reference to persons qualified by entry on a non-resident list (*Ib.* s. 75 (12)).

The provisions as to the separate non-resident list and the qualification of persons entered on it have however no application to London (see *Ib.* s. 77), and consequently need not be further referred to.

It might possibly be argued that the effect of the legislation is to render the qualification required for the office of mayor or alderman of a metropolitan borough the same as the qualification that would be required for membership of the county council if the borough were a county. It is submitted, however, particularly having regard to the provision in sub-sect. (1) of the present section as to women, which would otherwise be superfluous (see *Beresford Hope v. Sandhurst* (1889), 23 Q. B. D. 79; 58 L. J. Q. B. 316; 61 L. T. 150; 37 W. R. 548; 53 J. P. 805), that there can be little doubt that the effect of the legislation is, broadly speaking, to extend the qualification for the office of councillor of a metropolitan borough to the offices of mayor and alderman.

On this view of the matter, any person not disqualified who is a parochial elector of some parish within the borough or who has resided in the borough for the whole of the twelve months preceding the election will be eligible for election. A person qualified for election by residence will be qualified to retain office for his full term notwithstanding that he may have ceased to reside in the district. But a person qualified as a parochial elector but not by residence will cease to be qualified on ceasing to be a parochial elector. See *post*, pp. 21, 22.

A question, however, arises with reference to a peer owning property in the borough. A peer in this position will not be thereby qualified for the office of councillor; but it is submitted that as the office of alderman is expressly mentioned in sect. 2 (2) of the Local Government Act, 1888, he will be thereby qualified for the office of alderman of the borough. On the other hand, he will apparently not be thereby qualified for election as mayor from outside the council since that office is not expressly mentioned; though if he were first elected alderman he might of course, subject to the question of his qualification for that office, be elected mayor. No similar question arises as to a person registered as a parliamentary voter in respect of the ownership of property, since such persons are parochial electors and consequently qualified for the office of councillor.

By sect. 15 (2) of the Municipal Corporations Act, 1882, which will apply to a metropolitan borough, it is provided with reference to the mayor that "an outgoing alderman is eligible"; and by sect. 37 of the same Act, which will apply to the mayor and aldermen of a metropolitan borough, it is provided that "a person ceasing to hold a corporate office shall, unless disqualified to hold the office, be re-eligible."



It is submitted that these enactments are merely savings, which, as 62 & 63 Vict. applied to the mayor and aldermen of a metropolitan borough, will c. 14, s. 2 prevent the fact that a person is an outgoing alderman from rendering (4), n. him ineligible for election as mayor or re-election as alderman, or the fact that a person is an out-going mayor from rendering him ineligible for re-election to that office. But it is no doubt arguable that they also actually qualify persons for election who would not otherwise be qualified.

### Disqualifications for Office of Mayor or Alderman.

—By sub-sect. (5) of the present section, sect. 46 of the Local Government Act, 1894, which relates to disqualifications for office, and which is dealt with *post*, pp. 26–35, is extended to the offices of mayor and alderman.

By sect. 12 of the Municipal Corporations Act, 1882, certain persons are disqualified for the office of councillor of a municipal borough, and by virtue of the provisions above mentioned as to the qualification for the office of mayor or alderman of a municipal borough the section extends to the office of alderman, and to some extent at all events to the office of mayor, in a municipal borough. And the section consequently applies in like manner to the offices of county alderman and chairman of a county council as well as to county councillors, subject to a provision whereby clerks in holy orders, and other ministers of religion, though disqualified by sect. 12 of the Act of 1882 for the office of councillor of a municipal borough, are not to be disqualified for the office of county councillor or county alderman. If, however, the opinion above expressed that the effect of the legislation is to render persons eligible for the office of councillor of a metropolitan borough eligible also for the office of mayor or alderman of such a borough is correct, it appears to follow that sect. 12 of the Act of 1882 will not apply to these offices; and this view is certainly supported by the provisions extending sect. 46 of the Local Government Act, 1894, to the offices in question.

Sect. 39 of the Municipal Corporations Act, 1882, contains provisions as to the vacation of office by a mayor, alderman, or councillor of a municipal borough who becomes bankrupt or compounds with his creditors during his tenure of office, and as to his future disqualification for office. So far as regards bankruptcy these provisions seem to be practically superseded, if not impliedly repealed, by provisions in the Bankruptcy Acts, 1883 and 1890 (46 & 47 Vict. c. 52, ss. 32, 34; 53 & 54 Vict. c. 71, s. 9). So far as they are not repealed the provisions in question apply to the chairman, aldermen, and councillors of a county council. But it seems, in view of the provisions as to disqualification arising from bankruptcy or composition with creditors that will apply to the chairman and aldermen of a metropolitan borough by virtue of sub-sect. (5) of the present section (as to these provisions see *post*, pp. 26, 29), that sect. 39 will be inapplicable to these offices, or at least that its application to them will be of no practical importance.

Certain other enactments relating to disqualification for office which will apply to the offices of mayor and alderman of a metropolitan borough are mentioned at p. 34, *post*.

**Consequences of Disqualification or Want of Qualification.**—Where a person not qualified or disqualified for the office is elected mayor or alderman of a metropolitan borough, his election may be set aside on petition (see *post*, p. 60).

Where a person holding such an office becomes disqualified during

62 & 63 Vict.  
c. 14, s. 2  
(4), n.

his tenure of office, he may be deprived of office by means of *quo warranto* proceedings. With reference to such proceedings, see sect. 225 of the Municipal Corporations Act, 1882, which applies to members of a county council (51 & 52 Vict. c. 41, s. 75), and will therefore apply to the mayor and aldermen of a metropolitan borough.

By sub-sect. (7) of sect. 46 of the Local Government Act, 1894, which is applied to the mayor and aldermen of a metropolitan borough by sub-sect. (5) of the present section, and which is quoted and discussed in the note to that sub-section, it will be the duty of the council, when the mayor or an alderman becomes disqualified, to declare the office vacant in the manner thereby prescribed. It seems, however, that this provision will not apply where the mayor or alderman merely ceases to be qualified: see *post*, p. 34.

By sub-sect. (8) of the same section, a person who acts in the office of mayor or alderman of a metropolitan borough when disqualified will be subject to a penalty recoverable summarily.

Sect. 41 of the Municipal Corporations Act, 1882, provides that, "if any person acts in a corporate office without having made the declaration" of acceptance of office required by the Act (as to this declaration, see *post*, pp. 14, 15), "or without being qualified at the time of making the declaration, or after ceasing to be qualified, or after becoming disqualified, he shall for each offence be liable to a fine not exceeding fifty pounds, recoverable by action."

This section extends to members of a county council, and will consequently extend for most purposes to the mayor and aldermen of a metropolitan borough; though in view of the initial words of the present sub-section it is arguable that its operation in the case of a mayor or alderman acting when disqualified will be excluded by sect. 46 (8) of the Act of 1894. On this question see further sect. 33 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

The liability to penalties under sect. 41 of the Act of 1882 remains, at all events if the disqualification or want of qualification continues, although it may be too late to take proceedings by election petition or otherwise to have the seat declared vacant. See *De Souza v. Cobden* [1891], 1 Q. B. 687; 60 L. J. Q. B. 533; 65 L. T. 130; 39 W. R. 454; 55 J. P. 565.

An action under the section must be brought within three months after the cause of action arose, and is subject to other special provisions (45 & 46 Vict. c. 50, s. 224; and see *Humphriss v. Worwood* (1894), 64 L. J. Q. B. 437). And such an action can only be brought by a burgess of the borough; or, where the action is brought under the section as applied to county councils, by a county elector (*Ib.*; 51 & 52 Vict. c. 41, s. 75). Whether in the case of an action under the section as applied to the mayor and aldermen of a metropolitan borough, the right to bring the action will be confined to county electors or will extend to any parochial elector of the borough, is not clear.

By sect. 42 (1) of the Municipal Corporations Act, 1882, which will apparently apply as regards the mayor and aldermen of a metropolitan borough, "the acts and proceedings of a person in possession of a corporate office, and acting therein, shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified."

**Election of Mayor.**—The mayor of a metropolitan borough will be elected by the council (45 & 46 Vict. c. 50, s. 15 (1)), and his election must be the first business transacted at the meeting of the council on the day of his election (*Ib.* s. 61 (2)), which by sect. 3 (3)

of the present Act will be in general November 9, or if that day is a Sunday, November 10. though for the first election some other day may be chosen: see sect. 3 (1). 62 & 63 Vict. c. 14, s. 2 (4), n.

Provision for cases where a municipal election is not held on the appointed day, which will apparently apply to the election of the mayor or of the aldermen of a metropolitan borough, are contained in sect. 70 of the Municipal Corporations Act, 1882, which is as follows:—“(1) If a municipal election is not held on the appointed day or within the appointed time, it may be held on the day next after that day or the expiration of that time. (2) If a municipal election is not held on the appointed day or within the appointed time, or on the day next after that day or the expiration of that time, or becomes void, the municipal corporation shall not thereby be dissolved or be disabled from electing, but the High Court may, on motion, grant a mandamus for the election to be held on a day appointed by the Court. (3) Thereupon public notice of the election shall, by such person as the Court directs, be fixed on the town hall, and shall be kept so fixed for at least six days before the day appointed for the election; and in all other respects the election shall be conducted as directed by this Act respecting ordinary elections.”

In general the outgoing mayor will be entitled to preside over the election of his successor, since his term of office continues till his successor is appointed (see *post*, p. 16).

In the case of the first election, however, when there will be no outgoing mayor, and also in other cases, when the outgoing mayor is absent, or, it seems, where he is incapable of acting as chairman, a temporary chairman must in general be elected to preside over the election of the mayor under the provisions mentioned, *post*, p. 67. It seems possible, however, that a borough council may be invested with power to appoint a vice-chairman, and, if so, there may be cases where the vice-chairman will be entitled to preside: see *post*, p. 66.

A candidate for the office of mayor ought not to preside over the election of mayor, and if he does and is elected it seems that his election would be set aside on petition; though if another were elected the election would apparently stand good. See *Reg. v. Morton* [1892], 1 Q. B. 39; 61 L. J. Q. B. 39; 65 L. T. 611; 40 W. R. 109; 56 J. P. 105.

The proper course where the chairman of the meeting, whether the outgoing mayor or not, is nominated as a candidate for the office, is for him to vacate the chair, and, subject to the possibility that there may be a vice-chairman entitled to take the chair in such cases, for another person to be appointed as temporary chairman to preside over the election.

An outgoing alderman will not, as alderman, be entitled to vote in the election of the mayor (51 & 52 Vict. c. 41, s. 75 (10)). But if such an outgoing alderman has been elected a councillor, and has accepted office as such, it appears that he may vote in the latter capacity.

In *Nell v. Longbottom* [1894], 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. 499, a member of the council of a municipal borough who was a candidate for the office of mayor, to which office a salary was attached by a standing resolution of the council, was held to be prohibited from voting for himself by reason of sect. 22 (3) of the Municipal Corporations Act, 1882 which prohibits a member of the council of a municipal borough from voting on any matter in which he is pecuniarily interested. Whether the same result would have been arrived at had no salary been actually attached to the office, on the

62 & 63 Vict. c. 14, s. 2 (4), n. ground that the mayor might be granted remuneration in future, does not appear. Sect. 22 (3) of the Municipal Corporations Act, 1882, is not however generally applicable to the council of a metropolitan borough, nor is there any similar provision applicable to such a council. And it is submitted that the enactment cannot be regarded as applied by the present sub-section to the election of a mayor, and that there is therefore no reason why a member of a metropolitan council who is a candidate for the office of mayor should not vote for himself, even if a salary has already been attached to the post.

By sect. 61 (4) of the Municipal Corporations Act, 1882, which will apply to the election of a mayor of a metropolitan borough, "in case of equality of votes, the chairman, although not entitled to vote in the first instance, shall have the casting vote." In *Nell v. Longbottom*, ante p. 11, it was held that this provision does not prevent the chairman from being in general entitled to vote in the first instance, as well as to give a second or casting vote; but that it is merely intended to secure the chairman a casting vote even though for some reason he may be disabled from voting in the first instance.

**Election of Aldermen.**—The aldermen of a metropolitan borough will be elected by the council (45 & 46 Vict. c. 50, s. 14 (1)); and under sect. 3 (3) of the present Act, the ordinary day for their election will be November 9th, or, if that day is a Sunday, November 10th, but, under sect. 3 (1), some other date may be fixed for the first election. The provisions that will apply if the election is not held on the appointed day have been referred to in connection with the election of mayor (ante, p. 11).

The election must be held immediately after the election of the mayor (45 & 46 Vict. c. 50, s. 60 (2)).

If the newly-elected mayor is present, and has duly accepted office, he will be entitled to take the chair and preside over the election of aldermen. If the election takes place before the newly-elected mayor has accepted office, the outgoing mayor will be entitled to preside, for his term of office continues till his successor has accepted office (see *post*, p. 16). If the newly-elected mayor has not accepted office, and the outgoing mayor is not present, or, as will be the case on the occasion of the first election, there is no outgoing mayor, the election must, in general, be presided over by a temporary chairman elected by the council, though there may possibly be cases where there will be a vice-chairman of the council entitled to preside: see *post*, p. 66.

An outgoing alderman, though mayor elect, will not be entitled to vote (45 & 46 Vict. c. 50, s. 60 (3)). This provision prevents the newly-elected mayor from voting in the first instance if he is an outgoing alderman, even though he has made the required declaration of acceptance of office, and has thereupon taken the chair. See *Hounsell v. Suttill* (1887), 19 Q. B. D. 498; 56 L. J. Q. B. 502; 57 L. T. 102; 36 W. R. 127; 51 J. P. 440; *Pease v. Lowden* [1899], 1 Q. B. 386; 68 L. J. Q. B. 239; 79 L. T. 672; 63 J. P. 56.

In the last mentioned case an alderman, who in ordinary course would have gone out of office on November 9th, 1898, on the previous day sent to the town clerk a notice of resignation, together with the appropriate fine. But his office of alderman was not duly declared vacant. On November 9th he was elected mayor, took the chair, and voted as mayor in the election of aldermen. It was held that he remained an outgoing alderman, notwithstanding his inchoate resignation, and that he was consequently not entitled to vote.

By sect. 60 (6) of the Municipal Corporations Act, 1882, which

will apply to the election of the aldermen of a metropolitan borough, 62 & 63 Vict. "in case of equality of votes, the chairman, although as an outgoing c. 14, s. 2 alderman or otherwise not entitled to vote in the first instance, shall (4), n. have the casting vote." This provision shows that in general the chairman will be entitled to vote in the first instance, and in case of an equality of votes will have a second or casting vote. See also *Nell v. Longbottom*, ante pp. 11, 12.

As to the procedure at the election, the following provisions of sect. 60 of the Municipal Corporations Act, 1882, will apply:—

"(4) Every person entitled to vote may vote for any number of persons not exceeding the number of vacancies, by signing and personally delivering at the meeting to the chairman a voting paper containing the surnames and other names and places of abode and descriptions of the persons for whom he votes."

"(5) The chairman, as soon as all the voting papers have been delivered to him, shall openly produce and read them, or cause them to be read, and then deliver them to the town clerk to be kept for twelve months."

"(7) The persons, not exceeding the number of vacancies, who have the greatest number of votes, shall be declared by the chairman to be, and thereupon shall be, elected."

With regard to irregularities in the voting papers, the following points may be noticed.

By sect. 241 of the Municipal Corporations Act, 1882, which will apply to elections of aldermen of a metropolitan borough, "no misnomer or inaccurate description of any person, body corporate, or place . . . in any . . . voting paper required by this Act, shall hinder the full operation of this Act with respect to that person, body corporate, or place, provided the description of that person, body corporate, or place be such as to be commonly understood."

A voting paper at an election of aldermen is required to state the "surnames and other names" of the persons voted for. Recognised contractions of Christian names, such as Wm. for William, or Fredk. for Frederick, constitute a statement of a person's "other names" within this provision (see *Reg. v. Bradley* (1861), 3 E. & F. 634; 30 L. J. Q. B. 180; 3 L. T. 853; *Hozves v. Turner* (1876), 1 C. P. D. 670; 45 L. J. C. P. 550; 35 L. T. 58; *Henry v. Armitage* (1883), 12 Q. B. D. 257; 53 L. J. Q. B. 111; 50 L. T. 4; 32 W. R. 192; 48 J. P. 424). The use of initials in place of Christian names is not a compliance with the requirement (see *Mather v. Brown* (1876), 1 C. P. D. 596; 45 L. J. C. P. 547; 34 L. T. 869; 24 W. R. 736). But the defect would be cured, had it been misleading, by sect. 241 (see *Reg. v. Plenty* (1869), L. R. 4 Q. B. 346; 38 L. J. Q. B. 205; 20 L. T. 521). Misspelling of the candidate's name if not misleading would be cured by sect. 241, and even apart from that section would apparently be immaterial (see *Miller v. Everton* (1895), 64 L. J. Q. B. 692; 72 L. T. 838; 59 J. P. 351).

A complete omission of the description of the candidate would apparently vitiate the voting paper (see *Reg. v. Tugwell* (1868), L. R. 3 Q. B. 704; 37 L. J. Q. B. 275; 16 W. R. 1039; 9 B. & S. 367).

The candidate's place of abode is to be stated. By this his residence is meant, and it appears that a voting paper stating the candidate's place of business instead of his residence is bad, and that the defect would not be cured by sect. 241 (see *Reg. v. Deighton* (1844), 5 Q. B. 896; 13 L. J. Q. B. 241; 8 Jur. 686; *Reg. v. Hammond* (1852), 17 Q. B. 772; 21 L. J. Q. B. 153; 16 Jur. 194). An inaccurate description of the candidate's true place of abode

62 & 63 Vict. c. 14, s. 2 (4), n. may be cured by sect. 241 (see *Reg. v. Spratley* (1856), 6 E. & B. 363; 25 L. J. Q. B. 257; 2 Jur. (N.S.) 735; *Cf. Reg. v. Gregory* (1853), 1 E. & B. 600; 22 L. J. Q. B. 120; 17 Jur. 272). But that section will not render valid a voting paper describing a place which is not the candidate's place of abode (see *Reg. v. Coward* (1851), 16 Q. B. 819; 20 L. J. Q. B. 359; 15 Jur. 726; see also *Reg. v. Deighton*, *Reg. v. Hammond*, *ante*, p. 13).

It must, however, be borne in mind that the great change in the spirit in which technical errors in proceedings are viewed by the Court renders it very possible that cases decided thirty or forty years ago in which technical irregularities have been held to vitiate elections, would not be followed or would be distinguished on very narrow grounds.

**Acceptance of Office.**—Under sect. 34 of the Municipal Corporations Act, 1882, every qualified person elected to a corporate office, unless exempt under the section, or otherwise by law, is required to accept the office by making and subscribing a certain declaration within a certain time after notice of election, and if he does not so accept the office he becomes liable to pay to the council a fine.

This provision applies to county aldermen and the chairman of a county council, and will consequently apply to the mayor and aldermen of a metropolitan borough, subject to the provision that a person shall not be liable to a fine for non-acceptance of office unless his consent has been obtained to his nomination (51 & 52 Vict. c. 41, s. 75 (16 c); and see 54 & 55 Vict. c. 68, s. 5).

The time within which office must be accepted, in the case of the aldermen and mayor of a metropolitan borough, is by sub-sect. (7) of the present section to be the same as that allowed in the case of a councillor. The time within which a councillor will be required to accept office will doubtless be fixed by provisions in the Order of the Local Government Board under which elections of councillors will be held, adapting sect. 34 of the Municipal Corporations Act, 1882, to the acceptance of office by councillors. As to the power of the Local Government Board to make such an order, and thereby to adapt sect. 34 of the Act of 1882, see *post*, pp. 35, 36.

Seeing that a person will not be liable to a fine for non-acceptance of the office of alderman or mayor of a metropolitan borough, unless he has consented to his nomination, the exemptions from compulsory service in corporate offices referred to in sect. 34 of the Act of 1882 are of little importance. They may however be mentioned.

By the section itself the following persons are exempt: "Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body; and any person who, being above the age of sixty-five years, or having within five years before the day of his election either served the office or paid the fine for non-acceptance thereof, claims exemption within five days after notice of his election."

By sect. 36 (3) of the same Act: "No person enabled by law to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office by reason of his refusal on conscientious grounds to take any oath or make any declaration required by this Act or to take on himself the duties of the office."

By sect. 253 of the same Act: "Nothing in this Act shall compel the acceptance of any office or duty whatever in any borough by any military, naval, or marine officer in Her Majesty's service on full pay or half pay, or by any officer or other person employed and residing in

any of Her Majesty's dockyards, victualling establishments, arsenals, 62 & 63 Vict. barracks, or other naval or military establishments.

c. 14, s. 2

The following further exemptions from service in public offices (4), n. may be conveniently inserted at this point:—

Apothecaries are exempt from service in the "offices of constable, scavenger, overseer of the poor, and all other parish, ward and leet offices" (6 & 7 Will. & M. c. 4, ss. 1, 2); commissioners and officers of customs, from service in any "corporate, parochial, or other public office" (39 & 40 Vict. c. 36, s. 9); dentists registered under the Dentists Act, 1878, from service in "all corporate, parochial, ward, hundred, and township offices" (41 & 42 Vict. c. 33, s. 30); factory inspectors, from service in any "parochial or municipal office" (41 Vict. c. 16, s. 67); income tax commissioners certified under the Income Tax Act, 1842, from service in "all parish and ward offices within the parish or ward wherein such person shall dwell" (5 & 6 Vict. c. 35, s. 35); inland revenue commissioners and persons in their employ, from service as "mayor or sheriff" or in any corporate or parochial or other public office or employment" (53 & 54 Vict. c. 21, s. 8); medical practitioners registered under the Medical Act, 1858, from service in "all corporate, parochial, ward, hundred and township offices" (21 & 22 Vict. c. 90, s. 35); "teachers or preachers" of dissenting congregations in certain cases, from service in the office of churchwarden, overseer, "or any other parochial or ward office, or other office in any hundred of any shire, city, town, parish, division, or wapentake" (1 Will. & M. c. 18, s. 8; 52 Geo. III. c. 155, s. 9; and see 34 & 35 Vict. c. 48); persons in the army reserve, from service in "the office of constable, or any other parochial, township, or borough office" (45 & 46 Vict. c. 48, s. 7); persons in the militia (52 Geo. III. c. 38, s. 197; 45 & 46 Vict. c. 49, s. 41), the royal naval volunteers (22 & 23 Vict. c. 40, s. 7), and the royal naval coast volunteers (16 & 17 Vict. c. 73, s. 8), from service as "peace officer or parish officer"; post office officials, from service in any "corporate or parochial or other public office or employment" (7 Will. IV. & 1 Vict. c. 33, s. 12); registrars of births and deaths or of marriages, from service in "every parochial and corporate office whatever" (7 Will. IV. & 1 Vict. c. 22, s. 18); and Roman Catholic priests, from service in the office of "churchwarden, overseer of the poor, or any other parochial or ward office or other office, in any hundred of any shire, city, town, parish, division or wapentake" (31 Geo. III. c. 32, s. 8; 31 & 32 Vict. c. 72, s. 9; 34 & 35 Vict. c. 48).

The fine for non-acceptance of office, in those cases where it is payable will be a fine of such amount not exceeding in the case of an alderman, £50, and in the case of a mayor, £100, as the council by bye-law determine. If there is no bye-law the fine will, in the case of an alderman, be £25, and in the case of a mayor, £50. The fine will be recoverable summarily (45 & 46 Vict. c. 50, s. 34).

Acceptance of office is to be effected by making and subscribing before two members of the council, the town clerk, a justice of the peace, or a commissioner to administer oaths, a declaration of acceptance of office (*Ib.* s. 35, 54 & 55 Vict. c. 68, s. 5). The following will be the form of such declaration (see 45 & 46 Vict. c. 50, Sched. VIII., Form A).

"I, A. B., having been elected mayor [or alderman] for the hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability."

A person elected to the office of mayor or alderman of a metro-

62 & 63 Vict. c. 14, s. 2 (4), n. politan borough must not act before he has made the declaration except in administering that declaration (45 & 46 Vict. c. 50, s. 35). If he does act contrary to this provision he will incur liability to a fine (see *ante*, p. 15).

It is expressly provided that non-acceptance of office creates a casual vacancy (45 & 46 Vict. c. 50, s. 40 (3)).

**Term of Office of Mayor and Aldermen.**—The term of office of the mayor will be one year, but he will continue in office until his successor has accepted office and made and subscribed the required declaration (*Ib.* s. 15 (3)).

The term of office of an alderman will be six years, and one half of the number of aldermen will go out of office on the ordinary day of election of aldermen every third year, the half to go out being those who have been aldermen for the longest time without re-election (*Ib.* s. 14 (5-7)). Of the first aldermen elected for a metropolitan borough it will be necessary that half should hold office for three years only in order to establish the rotation. The necessary provisions in that behalf will be made under sect. 27 of the present Act.

By sect. 38 of the Municipal Corporations Act, 1882, which will apply to the mayor and aldermen of a metropolitan borough, it is provided, apparently rather superfluously, that "the mayor and aldermen shall, during their respective offices, continue to be members of the council, notwithstanding anything in this Act as to councillors going out of office at the end of three years."

**Resignation of Mayor and Aldermen.**—By sect. 36 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), which will apply to the mayor and aldermen of a metropolitan borough: "(1) A person elected to a corporate office may at any time, by writing signed by him and delivered to the town clerk, resign the office, on payment of the fine provided for non-acceptance thereof. (2) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the council and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant."

An attempt to resign office under these provisions is ineffectual if the fine is not paid (see *Futcher v. Saunders* (1885), 49 J. P. 424). The resignation is so far completed by the delivery of the writing to the town clerk and the payment of the fine that it cannot afterwards be withdrawn, even with the consent of the council (see *Reg. v. Wigan Corporation* (1885), 14 Q. B. D. 908; 54 L. J. Q. B. 338; 52 L. T. 435; 33 W. R. 547; 49 J. P. 372). But the office does not become completely vacant until it has been declared vacant in accordance with sub-sect. (2). See *Pease v. Lozden*, *ante*, p. 12.

**Casual Vacancies in Office of Mayor or Alderman.**—The following provisions of the Municipal Corporations Act, 1882, will apply in the case of a casual vacancy in the office of mayor or alderman of a metropolitan borough:—

By sect. 40 (1) "On a casual vacancy in a corporate office, an election shall be held by the same persons, and in the same manner as an election to fill an ordinary vacancy; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office."

By sect. 66 "(1) On a casual vacancy in a corporate office, the election shall be held within fourteen days after notice in writing of



the vacancy has been given to the mayor or town clerk by two <sup>62 & 63 Vict.</sup> <sup>c. 14, s. 8</sup> burgesses."

"(2) Where the office vacant is that of mayor, the notice of the meeting for the election shall be signed by the town clerk."

"(3) In other cases the day of election shall be fixed by the mayor."

For the purposes of its application to the mayor and aldermen of a municipal borough, "burgesses" in sect. 66 (1) must, it is submitted, be read "parochial electors." The sub-section does not appear to make it a condition precedent to the holding of the election that the notice referred to should have been given; but only to limit the time within which the election must be held where such notice has been given. As to cases where the election is not held in due time, see sect. 70 of the Act of 1882, quoted *ante*, p. 11.

**Vacation of Seat for Absence.**—Under sub-sect. (6) of sect. 46 of the Local Government Act, 1894, which is applied to the mayor and aldermen of a metropolitan borough by sub-sect. (5) of the present section, and is quoted and discussed in the note thereto, a mayor or alderman of a metropolitan borough who is absent from the meetings of the council for more than six months consecutively, except in case of illness or from some reason approved by the council, will vacate his office.

If a county alderman is, except in case of illness, continuously absent from the meetings for more than twelve months, "he shall thereupon immediately become disqualified and shall cease to hold the office;" and in such case, he is liable to the same fine as for non-acceptance of office, recoverable summarily, but the disqualification, as regards subsequent elections, ceases on his return (45 & 46 Vict. c. 50, s. 39 (1, 4); 51 & 52 Vict. c. 41, s. 75 (14)). These provisions will perhaps be applicable to the aldermen of a metropolitan borough, though in view of sect. 46 (6) of the Local Government Act, 1894, they will be of little or no practical importance.

**Remuneration of Mayor.**—By sect. 15 (4) of the Municipal Corporations Act, 1882, which will apply to the mayor of a metropolitan borough, the mayor "may receive such remuneration as the council think reasonable."

Remuneration is frequently voted to the mayor of a municipal borough, not with the object of remunerating him personally for his services as mayor, but with the object of providing him with funds to meet expenditure upon hospitality, public celebrations, and the like, which the borough council could not lawfully defray directly out of the funds subject to their control. To some extent it is considered legitimate to vote remuneration to the mayor with this object; but at present it seems impossible to draw a clear line between what is legitimate in this direction and what would be regarded as a misapplication of the borough fund.

In *A. G. v. Blackburn Corporation* (1887), 57 L. T. 385, the corporation passed resolutions that a sum of £700 should be paid to the mayor by way of remuneration; and that the mayor should be requested to take such steps as he might deem proper for the due celebration of her Majesty's jubilee. It was held by Chitty, J. that the vote of remuneration to the mayor was legitimate.

In *A. G. v. Cardiff Corporation* [1894], 2 Ch. 337; 63 L. J. Ch. 557; 70 L. T. 591, the corporation in view of an approaching royal marriage voted that a sum of £650 be added to the mayor's salary for

62 & 63 Vict. c. 14, s. 2 (4), n. the current year; this sum was paid into a separate banking account, and a sub-committee was appointed to arrange the details of the expenditure on the celebration of the marriage. Romer, J. refused to hold that, under the particular circumstances, the payment of the £650 was illegal. In the course of his judgment, he said: "It is clear that the corporation are not entitled to make a colourable addition to the mayor's salary merely that the addition may be applied in making payments which would not be justified if those payments were made directly by the corporation . . . The corporation is undoubtedly entitled to make a reasonable addition to the mayor's salary if it be anticipated that in his year of office, by reason of the occurrence of some event of national importance, his expenditure as mayor in festivities and so forth may be increased, and any resolutions *bonâ fide* passed increasing his salary in such a case could not be impeached. . . . Was the resolution in the present instance, increasing the salary by the sum of £650, passed *bonâ fide*? I am bound to say that I have felt considerable doubt on this matter . . . But, on the whole, I will, in this particular case, give the corporation the benefit of the doubt . . . If payments are desired to be made which are not intended to be really a simple increase to a mayor's salary, they should not, in my opinion, be made by way of addition to the mayor's salary; they ought to be made directly, so that they may be directly challenged if wrong and impeached. No addition should be made to the mayor's salary except it is intended merely for the purpose of the salary, so that the mayor may deal with it in any way he thinks fit as part of his salary."

**Mayor to be a Justice of the Peace.**—The mayor of a metropolitan borough will be *ex officio* a justice of the peace for the county of London. See sect. 24 and the note thereto.

(5.) Except as otherwise provided by or under this Act, the law relating to the constitution, election and proceedings of administrative vestries, and to the electors and members thereof, shall apply in the case of the borough councils under this Act and the electors and councillors thereof, and section forty-six of the Local Government Act, 1894, relating to disqualifications shall apply to the offices of mayor and alderman.

56 & 57 Vict. c. 73.

**Note—Law relating to Administrative Vestries.**—The matters arising in connection with the present sub-section are dealt with in the ensuing note, which is necessarily lengthy, in the following order:—Electors (pp. 18–21); Qualification of Councillors (pp. 21–26); Disqualifications (pp. 26–35); Election, etc. (pp. 35–45); Corruption, etc., at Elections (pp. 45–60); Election Petitions (pp. 60–63); Agency at elections (pp. 63–65); Proceedings of Borough Council (pp. 65–69).

**Electors.**—The electors of the councillors of a metropolitan borough will be in each ward such of the parochial electors of the parish or parishes in the borough as are registered in respect of qualifications within the ward. See sect 23 (3) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), which is applied to the electors of metropolitan vestries by sect. 31 (1) of that Act.

The "parochial electors" of a parish are the persons registered in

such portion either of the local government register of electors or of the parliamentary register of electors as relates to the parish, including in the case of a parish in a parliamentary borough the persons registered as parliamentary electors for the county in respect of the ownership of any property in the parish. (See 56 & 57 Vict. c. 73, ss. 2 (1), 44, 75.)

The expression "parliamentary register of electors" means "a register of persons entitled to vote at any parliamentary election"; and the expression "local government register of electors" means "as respects an administrative county in England or Wales other than a county borough, the county register, and as respects a county borough or other municipal borough the burgess roll" (52 & 53 Vict. c. 63, s. 17). The "burgess roll" in a municipal borough is the authoritative list of the persons enrolled as burgesses, who alone are entitled to vote at an election of borough councillors (see 45 & 46 Vict. c. 50, ss. 9 (1), 45 (8), 51). The county register for a county is similarly the authoritative list of persons entitled to vote at an election of county councillors: it includes the burgesses enrolled on the burgess rolls of the municipal boroughs in the county, if any, and persons registered as "county electors" for the remainder of the county (see 51 Vict. c. 10, ss. 2, 3, 7; 54 & 55 Vict. c. 68, s. 2).

The statutes relating to the qualification and registration of electors are of great complexity, and it is beyond the scope of this work to discuss their provisions. A few observations as to different forms of qualification, and as to the effect of registration, may however be made.

The existing administrative county of London, is wholly covered by parliamentary boroughs, and it contains no part of any municipal borough. The parochial electors of a parish in a parliamentary but not in a municipal borough are:—

(i.) Persons registered as parliamentary electors for a parliamentary county in respect of ownership of property, whether of freehold, copyhold, or leasehold tenure, in the parish.

(ii.) Persons registered as parliamentary electors of the parliamentary borough in respect of the ten pounds' occupation qualification. This is a qualification in respect of the occupation as owner or tenant of some land or tenement of the clear yearly value of not less than £10.

(iii.) Persons registered as parliamentary electors of the parliamentary borough in respect of the "household qualification." This is a qualification in respect of the occupation as inhabitant occupier of a dwelling house or of some part of a house separately occupied as a dwelling. This head of qualification includes the so-called "service franchise."

(iv.) Persons registered as parliamentary electors of the parliamentary borough in respect of the lodger qualification. This is a qualification in respect of the occupation as a lodger of lodgings of the clear yearly value, if let unfurnished, of £10 or upwards.

(v.) Persons registered as county electors in respect of "the old burgess qualification." This is a qualification in respect of the occupation as owner or tenant of a "house, warehouse, counting-house, shop, or other building."

(vi.) Persons registered as county electors in respect of the ten pounds' occupation qualification. This qualification differs little from the corresponding parliamentary qualification.

It is possible that under the provisions of the present Act as to boundaries places may be included in the administrative county of London that are not within a parliamentary borough. In such

62 & 63 Vict. c. 14, s. 2 (5), n. places the parochial electors would be the persons registered as parliamentary electors for the parliamentary county, whether by virtue of an ownership qualification or of an occupation qualification, and the persons registered as county electors.

A few words may be added with reference to the qualification of women as parochial electors.

Women are absolutely disqualified to be parliamentary electors (See *Chorlton v. Lings* (1868), L. R. 4 C. P. 374; 38 L. J. C. P. 25; 19 L. T. 534; 17 W. R. 284; 1 Hopw. & C. 1); and a woman possessed of a qualification such as would entitle a man to be registered as a parliamentary elector, but not as a local government elector, is not entitled to be registered for the purpose of voting as a parochial elector (see *Drax v. Ffooks* [1896], 1 Q. B. 238; 65 L. J. Q. B. 270; 74 L. T. 43; 60 J. P. 214).

Their sex does not disqualify them to be enrolled or to vote as burgesses or county electors, at all events in respect of the old burgess qualification (45 & 46 Vict. c. 50, s. 63); though whether a woman can be enrolled as a burgess or county elector in respect of the £10 occupation qualification is doubtful (see 51 Vict. c. 10, s. 3). Before the Local Government Act, 1894, however, marriage disqualified a woman for registration as a local government elector (see *Reg. v. Harrald* (1872) L. R. 7 Q. B. 361; 41 L. J. Q. B. 173; 26 L. T. 616; 20 W. R. 328). The disqualification thus entailed on a woman by marriage was removed by sect. 43 of the Local Government Act, 1894, for the purposes of that Act, subject to the proviso that "a husband and wife shall not both be qualified in respect of the same property." Married women registered as parochial electors will consequently be able to vote at elections of councillors of a metropolitan borough; though it seems that they are still incapable of voting at elections of county councillors or of councillors of a municipal borough.

As to the conclusiveness of the register of parochial electors, sect. 44 (1) of the Local Government Act, 1894, provides that any person whose name is not in the register of parochial electors for a parish, "shall not be entitled to attend a meeting or vote as a parochial elector, and any person whose name is in that register shall be entitled to attend a meeting and vote as a parochial elector unless prohibited from voting by this or any other Act of Parliament."

In the case of a parliamentary election it is provided by sect. 7 of the Ballot Act, 1872 (35 & 36 Vict. c. 33), that every person on the register shall be entitled to vote; "provided that nothing in this section shall entitle any person to vote who is prohibited from voting by any statute, or by the common law of Parliament." It was held, in *Storve v. Jolliffe* (*Petersfield Petition*) (No. 2) (1874), L. R. 9 C. P. 734; 43 L. J. C. P. 265; 30 L. T. 795; 22 W. R. 911, that this enactment renders the register conclusive for the purposes of a parliamentary election, except in the case of "persons who, from some inherent or for the time irremovable quality in themselves have not, either by prohibition of statutes or at common law, the status of parliamentary electors." At a parliamentary election, accordingly, the votes, not only of persons prohibited from voting by statute, but also of aliens, infants, women, &c., may be struck off, if the election is petitioned against, notwithstanding that such persons may by error be on the register.

It may be, however, that sect. 44 (1) of the Local Government Act, 1894, renders the register conclusive for the purpose of elections under that Act (including elections of councillors of a metropolitan

borough) even in the case of persons, such as aliens and infants, who have not the status of electors, and allows of its being questioned on petition only as regards persons prohibited from voting by statute.

Among persons prohibited by statute from voting at such elections are persons guilty of certain offences against election law at parliamentary and other elections (see 46 & 47 Vict. c. 51, ss. 4, 6 (3), 10, 11, 36, 37, 38 (5), 43 (4); 47 & 48 Vict. c. 70, ss. 2 (2), 3, 7, 8 (2), 22, 23, 28 (4), 35, 36; 51 & 52 Vict. c. 41, s. 75; 56 & 57 Vict. c. 73, s. 48), persons employed for payment in connection with the election (see 47 & 48 Vict. c. 70, s. 13), and persons adjudged incapable of voting upon conviction under the Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict. c. 69, s. 2).

By sect. 14 of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), it is provided that "no person shall be entitled to vote in the election of a guardian or in the election to an office under any statute who shall be in receipt of relief given to himself or his wife or child, or who shall have been in receipt of such relief on any day during the year last preceding such election." In the case of any person objected to on this ground a certificate from the clerk of the guardians under his hand shall be sufficient evidence of such person having received relief." It is doubtful, however, whether this provision amounts to a prohibition against voting by paupers within the meaning of sect. 44 of the Local Government Act, 1894. The receipt of relief during the qualifying period generally, it will be remembered, disqualifies the recipient for registration.

Police constables, it may be mentioned, are not disqualified to vote at elections under the Local Government Act, 1894, and will accordingly not be disqualified to vote at elections of councillors of a metropolitan borough. Under the Police Disabilities Removal Acts, 1887 and 1893 (50 Vict. c. 9; 56 & 57 Vict. c. 6), which removed the disabilities for voting at parliamentary and municipal elections formerly attaching to the police, constables on duty have special facilities for recording their votes at elections, including elections of councillors of a metropolitan borough and other elections under the Local Government Act, 1894.

By sect. 44 (4) of the Local Government Act, 1894, "nothing in any Act shall prevent a person, if duly qualified, from being registered in more than one register of parochial electors." Consequently a person duly qualified may be registered as a parochial elector not only in several different metropolitan boroughs, but also on the register of more than one parish in the same borough.

Whether a person can claim in all cases to be registered in respect of two qualifications in the same parish, but in different wards of the metropolitan borough, is a question of great difficulty, owing to the state of inextricable confusion into which successive amendments in the law have brought the enactments relating to "double entry," as it is called, in lists of voters. As to voting in more than one ward of a borough, see sect. 48 (2, ii.) of the Local Government Act, 1894, *post*, p. 36, and the observations with regard to that clause, *post*, p. 38.

**Qualification of Councillors.**—By sect. 23 (2) of the Local Government Act, 1894, which applies primarily to urban district councillors, "a person shall not be qualified to be elected or to be a councillor unless he is a parochial elector of some parish within the district, or has during the whole of the twelve months preceding the election resided in the district." This provision is extended to vestry-

62 & 63 Vict.  
c. 14, s. 2  
(5), n.

men of a metropolitan vestry by sect. 31 (1) of the Act of 1894, and will therefore apply to councillors of a metropolitan borough, with the obvious verbal substitution of borough for district.

It should be observed that if a person has resided in the borough for the necessary twelve months before election, the fact that he ceases to reside in the borough does not prevent his being entitled to remain in office for his full term. On the other hand, if he did not reside within the borough for that period, but was a parochial elector of some parish in the borough at the time of his election, he will cease to be entitled to retain his seat, if during his term of office he ceases to be a parochial elector of some parish within the borough, even though by that time he may have resided for twelve months in the borough and be therefore qualified for immediate re-election.

It is doubtful whether the twelve months' residence should be reckoned from the last day for sending in nominations, or from the day of election properly so called.

Some observations on the nature of a residential qualification may be useful.

The meaning of the word reside and its derivatives cannot be stated with any great degree of exactness. In *Rex v. North Curry Inhabitants* (1825), 4 B. & C. 953, at p. 959; 7 D. & R. 424, Bayley, J., said that the word residence "where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats, drinks, and sleeps, or where his family or his servants eat, drink, and sleep." The meaning put upon the expression in different statutes has, however, varied considerably according to the object and scope of the particular enactment in question.

Residence for a certain "qualifying period" within given limits is required as a condition of certain electoral qualifications; and the decisions as to the meaning of residence in the Acts relating to such qualifications appear to be applicable with reference to residential qualifications for membership of a local authority. See *per* Channell, J., in *Stamford v. Williams*, Loc. Govt. Chron. 1899, 467.

The following passage in Elliott on Registration (2nd ed. p. 204), with regard to the meaning of residence in these Acts has more than once been referred to with approval (see *Powell v. Guest* (1864), 18 C. B. (N.S.) 72; 34 L. J. C. P. 69; 11 L. T. 599; 10 Jur. (N.S.) 1238; 13 W. R. 274; H. & P. 149; *Bond v. St. George's, Hanover Square, Overseers* (1870), L. R. 6 C. P. 312; 40 L. J. C. P. 47; 23 L. T. 494; 19 W. R. 101; 1 Hopw. & C. 427):—"The rule upon this subject may perhaps be stated thus: that in order to constitute residence, a party must possess at the least a sleeping apartment; but that an uninterrupted abiding at such dwelling is not requisite. Absence, no matter how long, if there be the liberty of returning at any time, and no abandonment of the intention to return whenever it may suit the party's pleasure or convenience so to do, will not prevent a constructive legal residence. But if he has debarr'd himself of the liberty of returning to such dwelling by letting it, for a period however short, or has abandoned his intention of returning, he cannot any longer be said to have even a legal residence there."

Subject to the general principles thus stated the question whether a person has resided in a given place during the qualifying period is mainly a question of fact, depending upon all the circumstances of the case. See *Whitborn v. Thomas* (1844), 7 Man. & G. 1; 8 Scott N. R. 783; 1 Lutw. Reg. Cas. 125; 14 L. J. C. P. 38; 8 Jur. 1008.

A person may, it should be mentioned, have more than one

residence. *Whithorn v. Thomas*; *Bond v. St. George's, Hanover Square*, 62 & 63 Vict. *Overseers*, ante, p. 22; *Stamford v. Williams*, post, p. 24. c. 14, s. 2

A brief account of the decided cases is subjoined; they are, (5), n. however, for the most part merely illustrations of the principles stated above. Certain Irish cases cited at p. 25, however, seem to indicate that the rule requires some modification or amplification with reference to persons who suffer imprisonment during the qualifying period.

In *Whithorn v. Thomas*, ante, p. 22, it appeared that A. resided with his wife and family at G., but paid 9d. a week for the use of a bedroom and dark closet at T. where he slept twelve times during the course of six months; the revising barrister decided that A. had not resided during the six months at T., and the Court upheld the barrister's decision.

It was held that a man's residence was broken where he was imprisoned for a crime in a gaol beyond the specified limits. *Powell v. Guest*, ante, p. 22. See also *Donnelly v. Graham*; *Conolly v. Ridhall*; *Martin v. Hamrakan*; *Charlton v. Morris*; *Holland v. Haggon*, post, p. 25.

In *Taylor v. St. Mary Abbott, Overseers* (1870), L. R. 6 C. P. 309; 40 L. J. C. P. 45; 23 L. T. 493; 19 W. R. 100; 1 Hopw. & C. 421 a man who was employed as attendant upon a gentleman and for whom lodgings were taken in the same house with the gentleman where he might and usually did sleep, but where he was not by his agreement bound to sleep, and who also had lodgings at C. where his family resided and where he could sleep at any time and did in fact sleep at least once a week, was held to have resided at C.

In *Bond v. St. George's, Hanover Square, Overseers*, ante, p. 22, a man who occupied lodgings in a borough, separately and as sole tenant, during the qualifying period of twelve months, who also had a house in the country where he kept an establishment of servants all the year round, and who, when in the borough, as he had been at intervals for two months out of the twelve, resided at such lodgings, was held to have had a sufficient residence in the borough.

In *Durant v. Carter* (1873), L. R. 9 C. P. 261; 43 L. J. C. P. 17; 29 L. T. 681; 22 W. R. 158; 2 Hopw. & C. 142, an incumbent was held to have ceased to reside in his rectory where he obtained from the bishop a license for non-residence and went abroad, and a curate went to reside at the rectory under a licence to officiate which required him to reside there, it being admitted that the incumbent could not have returned to the rectory without providing some other residence for the curate.

In *Ford v. Pye* (1873), L. R. 9 C. P. 269; 43 L. J. C. P. 21; 29 L. T. 684; 22 W. R. 159; 2 Hopw. & C. 157, a clergyman who, under an arrangement with another clergyman, exchanged duties and residences with the latter for a time, for the purpose of obtaining relaxation and change of scene, was held to have broken his residence.

In *Ford v. Hart* (1873), L. R. 9 C. P. 273; 43 L. J. C. P. 24; 29 L. T. 685; 22 W. R. 159; 2 Hopw. & C. 167, an officer who, when on leave, resided with his mother, and who had no other home, was held to lose his constructive residence at her house when he was with his regiment, as he was then subject to the will of the Queen and had not the liberty of returning at his pleasure.

In *Ford v. Dresv* (1879), 5 C. P. D. 59; 49 L. J. C. P. 172; 41 L. T. 478; 28 W. R. 137; Colt. 1, a man who had rooms kept for him in his father's house, was held to break his residence there by being absent in London serving under articles to a solicitor.

In *Beal v. Ford* (1877), 3 C. P. D. 73; 47 L. J. C. P. 56; 37 L. T. 408; 26 W. R. 146; 2 Hopw. & C. 374, a man who during the

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c. 14, s. 2  
(5), n.

qualifying period had in fact resided in a room in a cottage allotted to his wife's mother by the trustees of a charity was held to have resided there within the meaning of the Reform Act, 1832 (2 Will. IV. c. 45, s. 33, now repealed), though his residence constituted a breach of the rules of the charity.

In *Beal v. Exeter (town clerk)* (1887), 20 Q. B. D. 300; 57 L. J. Q. B. 128; 58 L. T. 407; 36 W. R. 507; 52 J. P. 501; 1 Fox, 31, it appeared that A. had a bedroom kept for his exclusive use in his father's house at E.; that during the qualifying period he went to London in quest of employment, and, having obtained a temporary situation, remained there for two months and then returned to his father's house at E.; and that he remained at E. three weeks and then went back to London, and, obtaining employment there, did not return to E. during the rest of the qualifying period. It was held that A. had not resided in E. during the qualifying period.

In *Barlow v. Smith* (1892), 1 Fox, 293, a person was held not to have resided on premises which he occupied, and in which he spent a considerable time daily, except on Sundays, but in which he had slept only twice during the qualifying period on a temporary bed made up on chairs.

In *Stamford v. Williams*, Loc. Govt. Chron., 1899, 467, decided with reference to the qualification of a member of a metropolitan vestry under the Local Government Act, 1894, it appeared that the member in question had during the whole of the twelve months preceding his election, though during that period he generally lived with his wife and family in a house elsewhere, been tenant of a room in a house in the parish belonging to one B. In the course of the twelve months he was away from the parish for the month of August, when the house was shut up, for two or three weeks in January, and at another time for a period of six weeks, during which he visited America. Except for these absences, he was in the habit of sleeping in the room two or three nights a week. He had a right to the exclusive use of the room during the whole of the twelve months, and did not on any occasion of his absence abandon the intention of resuming the use of the room. It was held that he had resided in the parish during the whole of the twelve months.

In *Reg. v. Exeter (mayor) (Westcomb's Case)* (1868), L. R. 4 Q. B. 110; 19 L. T. 397, arising on an enactment (5 & 6 Will. IV. c. 76, s. 9, now repealed) which required that to enjoy a certain electoral qualification a person should, during a certain period, have been an "inhabitant householder" within given limits, Blackburn, J., said:—"There is no strict or definite rule for ascertaining what is inhabitance or residence. The words have nearly the same meaning. . . . The question is whether there has been such a degree of inhabitance as to be, in substance and in common sense, a residence." In that case a person who commonly lived in London, but carried on business at E., where he kept offices and some rooms in which he had, during the qualifying period, stayed several times for several days together, was held to be an inhabitant householder at E.

In *Reg. v. Boycott* (1866), 14 L. T. 599, an earlier case, arising under the same enactment, a man was held to be an inhabitant householder in respect of a house which formed his permanent home, and in which he kept up his establishment of servants, though, owing to fortuitous circumstances, he had slept elsewhere throughout the qualifying period.

In *Reg. v. Exeter (mayor) (Dipstale's Case)* (1868), L. R. 4 Q. B. 114; 19 L. T. 432, another case on the same enactment, the mayor



of a borough, acting as revising officer, held that A., who occupied premises jointly with another, and had the exclusive use of a bed-room in such premises, but habitually slept elsewhere, was not an inhabitant householder in respect of those premises; and the Court refused to reverse the mayor's decision on an affidavit that A. "sometimes" slept at the premises in question. 62 & 63 Vict. c. 14, s. 2 (5), n.

In order to enjoy the household qualification under the Representation of the People Act, 1867 (30 & 31 Vict. c. 102, s. 3), a person must, during the qualifying period, have been the "inhabitant occupier, as owner or tenant," of a dwelling-house.

Under this enactment it has been held that a man absent from his dwelling-house on military duty for a short time in the course of the qualifying period thereby loses the qualification, even though his family continue, during his absence, to reside at the dwelling-house in question. See *Ford v. Burnes*, *Ford v. Elmsley* (1885), 16 Q. B. D. 254; 55 L. J. Q. B. 24; 53 L. T. 675; 50 J. P. 37; Colt. 396; *Spittall v. Brook* (1886), 18 Q. B. D. 426; 56 L. J. Q. B. 48; 56 L. T. 364; 35 W. R. 520; 1 Fox, 22; *Donoghue v. Brook* (1887), 57 L. J. Q. B. 122; 58 L. T. 411; 1 Fox, 100.

Under the same enactment it was held in *Tanner v. Carter*, *Banks v. Mansell* (1885), 16 Q. B. D. 231; 53 L. T. 663; 34 W. R. 41; 49 J. P. 790; Colt. 435; *s. cc. nom. Tanner v. Castor*, *Banks v. Mansell*, 55 L. J. Q. B. 27, that the absence of undergraduates of Oxford and Cambridge from their rooms during the vacations, which comprise nearly six months in the year, and during which such undergraduates are not permitted to reside in their rooms, constituted a break in their residence, preventing their being qualified as inhabitant occupiers in respect of their rooms.

A number of cases have arisen in Ireland as to the effect of imprisonment in breaking the occupation necessary under the enactment in question.

It was held in *Donelly v. Grabam* (1888), 24 L. R. Ir. 127, that imprisonment for a fortnight by way of punishment for a crime broke the occupation: and in *Martin v. Hanrahan* (1888), 24 L. R. Ir. 127, it was held that the occupation was broken where a man was remanded to gaol for two days on a criminal charge, and upon being brought up again either pleaded guilty or was convicted, but was immediately discharged by the bench in the exercise of their discretion.

On the other hand, in *Conolly v. Riddall* (1888), 24 L. R. Ir. 127, where a man was remanded to gaol for a week on a criminal charge, owing to his refusal to give bail, but was afterwards acquitted, it was held by the majority of the Court that the occupation was not broken. And this decision was followed by the majority of the Court in *Charlton v. Morris* [1895], 2 Ir. R. 541, where a man was remanded to gaol during the qualifying period, but had not been tried at the time when the lists were revised.

In *Holland v. Hagan* [1895], 2 Ir. R. 551, a man was arrested and imprisoned. He was brought before a magistrate next day, and was convicted and sentenced to imprisonment for fourteen days, with the option of a fine, whereupon he paid the fine and was immediately discharged. It was held, on the ground that he had not been in prison for the whole of any one day, that his occupation was not broken.

It may be observed that the House Occupiers Disqualification Removal Act, 1878 (41 Vict. c. 3); the Municipal Voters Relief Act, 1885 (48 Vict. c. 9); and the Electoral Disabilities Removal Act, 1891 (54 Vict. c. 11), which relieve against loss of certain electoral

62 & 63 Vict. c. 14, s. 2 (5), n. qualifications through a temporary breach of residence in certain cases, do not relieve against the loss of a residential qualification for office.

**Disqualifications for Office.**—The chief provisions as to disqualification for office that will apply to councillors of a metropolitan borough are those as to disqualifications of councillors of a county district contained in sect. 46 of the Local Government Act, 1894, which extends to members of metropolitan vestries by virtue of sub-sect. 9 of that section, whereby “this section shall apply in the case of any authority whose members are elected in accordance with this Act in like manner as if that authority were a district council.” It applies also, by virtue of the last words of the present sub-section to the offices of mayor and alderman of a metropolitan borough. The section so far as it applies to councillors of a county district is as follows:—

“(1.) A person shall be disqualified for being elected or being a member . . . of a council . . . of a district other than a borough . . . if he—

- (a) is an infant or an alien; or
- (b) has within twelve months before his election, or since his election, received union or parochial relief; or
- (c) has, within five years before his election or since his election, been convicted either on indictment or summarily of any crime, and sentenced to imprisonment with hard labour without the option of a fine, or to any greater punishment, and has not received a free pardon, or has, within or during the time aforesaid, been adjudged bankrupt or made a composition or arrangement with his creditors; or
- (d) holds any paid office under the . . . district council . . . or
- (e) is concerned in any bargain or contract entered into with the council . . . or participates in the profit of any such bargain or contract or of any work done under the authority of the council . . .

“(2.) Provided that a person shall not be disqualified for being elected or being a member . . . of any such council . . . by reason of being interested—

- (a) in the sale or lease of any lands or in any loan of money to the council . . . or in any contract with the council for the supply from land, of which he is owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges, or in the transport of materials for the repair of roads or bridges in his own immediate neighbourhood; or
- (b) in any newspaper in which any advertisement relating to the affairs of the council . . . is inserted; or
- (c) in any contract with the council . . . as a shareholder in any joint stock company; but he shall not vote at any meeting of the council . . . on any question in which such company are interested, except that in the case of a water company or other company established for the carrying on of works of a like public nature, this prohibition may be dispensed with by the county council.

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“(4.) Where a person is disqualified by being adjudged bankrupt or making a composition or arrangement with his creditors, the disqualification shall cease, in case of bankruptcy, when the adjudication is annulled, or when he obtains his discharge with a certificate that his

bankruptcy was caused by misfortune without any misconduct on his part, and, in case of composition or arrangement, on payment of his debts in full.

62 & 63 Vict. c. 14, s. 2 (5), n.

“(6.) If a member of a council . . . of a district other than a borough . . . is absent from meetings of the council . . . for more than six months consecutively, except in case of illness or for some reason approved by the council . . . his office shall on the expiration of those months become vacant.

“(7.) Where a member of a council . . . becomes disqualified for holding office, or vacates his seat for absence, the council . . . shall forthwith declare the office to be vacant, and signify the same by notice signed by three members and countersigned by the clerk of the council . . . and notified in such manner as the council . . . direct, and the office shall thereupon become vacant.

“(8.) If any person acts when disqualified, or votes when prohibited under this section, he shall for each offence be liable on summary conviction to a fine not exceeding twenty pounds.”

*Union or Parochial Relief.*—With regard to relief granted to married women and children, the Poor Law Amendment Act, 1834 (4 & 5 Will. IV. c. 76), contains the following enactments —

Sect. 56. “All relief given to or on account of the wife, or to or on account of any child or children under the age of sixteen, not being blind or deaf and dumb, shall be considered as given to the husband of such wife, or to the father of such child or children, as the case may be. . . .”

Sect. 57. “Every man who from and after the passing of this Act shall marry a woman having a child or children at the time of such marriage, whether such child or children be legitimate or illegitimate, shall be liable to maintain such child or children as a part of his family, and shall be chargeable with all relief, or the cost price thereof, granted to or on account of such child or children until such child or children shall respectively attain the age of sixteen, or until the death of the mother of such child or children: and such child or children shall, for the purposes of this Act, be deemed a part of such husband’s family accordingly.”

Sect. 71. “Every child which shall be born a bastard after the passing of this Act shall have and follow the settlement of the mother of such child until such child shall attain the age of sixteen, or shall acquire a settlement in its own right, and such mother, so long as she shall be unmarried or a widow, shall be bound to maintain such child as a part of her family until such child shall attain the age of sixteen; and all relief granted to such child while under the age of sixteen shall be considered as granted to such mother: Provided always, that such liability of such mother as aforesaid shall cease on the marriage of such child, if a female.”

In *Reg. v. St. George, Bloomsbury, Overseers* (1863), 4 B. & S. 108; 32 L. J. M. C. 217; 11 W. R., a pauper settlement case, it was held, under sect. 56 of the Poor Law Amendment Act, 1834, above quoted, that the maintenance of a man’s wife in a lunatic asylum was relief to him. But in *Reg. v. St. Mary, Islington, Union* (1862), 3 B. & S. 46; 31 L. J. M. C. 233; 9 Jur. (N.S.) 155; 6 L. T. 606, another pauper settlement case, it was held that relief to a child over sixteen was not relief to the parent.

The Elementary Education Act, 1876 (39 & 40 Vict. c. 79, s. 10), provides that a parent of children whose school fees are paid by the guardians under that Act is not by reason of such payment to “be

62 & 63 Vict. c. 14, s. 2 (5), n. deprived of any franchise, right, or privilege, or be subject to any disability or disqualification."

The Vaccination Act of 1867 (30 & 31 Vict. c. 84, s. 26), provides that "the vaccination, or the surgical or medical assistance incident to the vaccination, of any person in a union or parish . . . performed or rendered by a public vaccinator, shall not be considered to be parochial relief, alms, or charitable allowance to such person or his parent, and no such person or his parent shall by reason thereof be deprived of any right or privilege, or be subject to any disability or disqualification."

The Public Health (London) Act, 1891 (54 & 55 Vict. c. 76, s. 80 (4)), provides that "the admission of a person suffering from an infectious disease into any hospital provided by the metropolitan asylum managers, or the maintenance of any such person therein, shall not be considered to be parochial relief, alms, or charitable allowance to any person, or to the parent or husband of any person; nor shall any person or his or her parent or husband be by reason thereof deprived of any right or privilege, or be subjected to any disability or disqualification." A similar provision is made as regards maintenance in a hospital provided under the Isolation Hospitals Act, 1893 (56 & 57 Vict. c. 68, s. 23). And there is a similar provision as to persons to whom assistance is rendered under the Cleansing of the Persons Act, 1897 (60 & 61 Vict. c. 31, s. 1).

Under the Reform Act, 1832 (2 Will. IV. c. 45, s. 36), which disqualifies for the parliamentary franchise persons who have within a given period received parochial relief, it has been held that, though persons may be compelled to contribute towards the maintenance of their parents and grandparents, relief granted to a person's parents or grandparents does not disqualify such persons: *Trotter v. Trevor* (1862), 13 C. B. (N.S.) 48; K. & G. 531; 32 L. J. C. P. 59; 9 Jur. (N.S.) 443; 7 L. T. 678; 11 W. R. 92; *cf. Reg. v. Ireland* (1868), L. R. 3 Q. B. 130; 37 L. J. Q. B. 73; 17 L. T. 466; 16 W. R. 358; 9 B. & S. 19, decided on the 5 & 6 Will. IV. c. 76, s. 9, now repealed).

Under the same Act it was held, at the trial of an election petition, that relief given to a child did not disqualify the child's grandparent with whom the child lived: *Oldham election petition* (*Cobbett v. Hibbert*) (1869), 1 O'M. & H. 151, at p. 160; 20 L. T. 302, at p. 309. *Cf. Reg. v. St. Mary, Islington, Union, ante*, p. 27.

In the same case, Blackburn, J., expressed an opinion that relief given by way of loan and duly repaid would not disqualify the recipient (*Ib.* 1 O'M. & H. p. 161; 20 L. T. p. 309), but it is difficult to understand the grounds of this opinion.

Excusal of payment of the poor rate on account of poverty under the Poor Relief Act, 1814 (54 Geo. IV. c. 170, s. 11), is not parochial relief within the meaning of the Reform Act (*Mashiter v. Dunn* (1848), 6 C. B. 30; 18 L. J. C. P. 13; 13 Jur. 194; *s. c. nom. Mashiter v. Lancaster* (town clerk), 2 Lutw. Reg. Cas. 112), though of course it would lead to the loss of any qualification depending upon the payment of the poor rate.

In *Magarrill v. Whitehaven Overseers* (1885), 16 Q. B. D. 242; 55 L. J. Q. B. 38; 53 L. T. 667; 34 W. R. 275; 49 J. P. 743; Colt. 448. employment during time of distress by guardians, where the pay was not commensurate with the work done, but with the wants of the person employed, was held to be parochial relief within the meaning of the last-mentioned Act.

It may be observed that the Medical Relief Disqualification Removal Act, 1885 (48 & 49 Vict. c. 46), which provides that the receipt of

medical relief shall not deprive the recipient of certain rights of being 62 & 63 Vict. registered as an elector and voting, does not relieve against disqualification c. 14, s. 2 for office by reason of the receipt of such relief. (5), n.

*Conviction of crime.*—Under a provision of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75, Sched. II. Part I. rule 14), providing that if a member of a school board should be "punished with imprisonment for any crime," he should cease to be a member, it was held that a member imprisoned on summary conviction in Ireland under the Criminal Law and Procedure (Ireland) Act, 1887 (50 & 51 Vict. c. 20, the so-called "Coercion" Act) lost his seat: *Conybeare v. London School Board* [1891] 1 Q. B. 118; 60 L. J. Q. B. 44; 63 L. T. 651; 39 W. R. 288; 55 J. P. 151; 17 Cox. C. C. 191.

*Bankruptcy.*—The provisions of the Bankruptcy Acts (46 & 47 Vict. c. 52, ss. 32, 34; 53 & 54 Vict. c. 71, s. 9) disqualifying bankrupts from certain offices, appear to be superseded by the sect. 46 of the Local Government Act, 1894, as regards the offices to which that section applies.

It is to be observed that while under the Bankruptcy Acts the disqualifications of a bankrupt do not in general cease till five years from his discharge, the disqualification under sect. 46 of the Act of 1894 ceases five years after the adjudication. Under that enactment, therefore, it seems possible for an undischarged bankrupt to hold office after the expiration of five years from the adjudication. It may be observed that the provisions of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52, s. 32), disqualifying bankrupts for certain offices, are not retrospective, and do not apply to a person adjudged bankrupt before that Act came into operation. *Bourke v. Nutt (Pulborough School Board election petition)*, [1894] 1 Q. B. 725; 63 L. J. Q. B. 497; 70 L. T. 639; 42 W. R. 388, Esher, M. R., diss. The Court has power to grant a certificate, such is referred to in sub-sect. (4) of the section under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52, s. 32), and the refusal of such a certificate is subject to appeal. As to the meaning of the expression bankruptcy caused by misfortune without misconduct, see *Re Burgess* (1887), 57 L. T. 200; 35 W. R. 702; 4 M. B. R. 186; *Re Campbell, Lord Colin* (1888), 20 Q. B. D. 816; 59 L. T. 194; 36 W. R. 582; 5 M. B. R. 94.

*Composition with creditors.*—The Public Health Act, 1875 (38 & 39 Vict. c. 55, Sched. II., r. 5, now repealed), provided that "a person who is a bankrupt or whose affairs are under liquidation by arrangement or who has entered into any composition with his creditors, shall be incapable, so long as any proceedings in relation to such bankruptcy liquidation or composition are pending, of being elected member of a local board." This provision was held in *Reg. v. Coobun* (1886), 18 Q. B. D. 269; 56 L. J. M. C. 33; 51 J. P. 500, not to disqualify a person who had assigned all his property by deed to a trustee for the benefit of those of his creditors who should sign the deed, where the deed mentioned no sum as a composition to be paid on the debts scheduled as due to the creditors, and contained a clause discharging the debtor from all debts due to the signing creditors; the Court considering that the deed was not a composition with creditors within the meaning of the Act.

An arrangement with their creditors by a firm of partners disqualifies each member of the firm, under sect. 46 of the Act of 1894: *Ward v. Radford* (1895), 59 J. P. 632.

As to disqualification by reason of composition with creditors, see also *Hardwick v. Brown* (1873), L. R. 8 C. P. 406; 28 L. T. 502; 21 W. R. 639; *Aslatt v. Southampton Corporation* (1880),

62 & 63 Vict. 16 Ch. D. 143; 50 L. J. Ch. 31; 43 L. T. 464; 29 W. R. 117;  
c. 14, s. 2 45 J. P. 111.  
(5), n.

*Interest in contract, &c.*—Apart from the express provisions of any statute, the personal interest of a member of a local authority in the proceedings of such authority in which he takes part as a member does not, it seems, invalidate those proceedings. Thus in *Murray v. Epsom Local Board*, [1897] 1 Ch. 35; 66 L. J. Ch. 107; 75 L. T. 579; 45 W. R. 185; 61 J. P. 71, an action for a declaration of the plaintiff's right to erect posts in a public footway in order to prevent it from being used for carriage traffic. Stirling, J. struck out from the statement of claim as irrelevant allegations of personal interest in a member of the board who had taken an active part in the matter at board meetings.

It would seem that sect. 46 (1)*e* of the Local Government Act, 1894, does not necessarily render a contract entered into between an authority and a member of the authority void, though the making of the contract involves the disqualification of the member in question. See *Foster v. Oxford, Worcester, and Wolverhampton Railway* (1853), 13 C. B. 200; 22 L. J. C. P. 99; 17 Jur. 167. In *Read v. Punter* (1898), 14 Times L. R. 455, however, Wills, J., expressed the opinion that if a member of the authority acted as such in making the contract, then the contract would be void under the section.

Many Acts of Parliament both general and local contain provisions either disqualifying persons interested in a contract with a local authority for membership of the authority, or simply forbidding members of the authority to contract with the authority; and upon such provisions, which of course differ considerably from one another in terms, a considerable number of cases have been decided. It is, however, necessary, in considering how far any such case may be regarded as an authority on the interpretation of the section under consideration to have regard to the exact terms of the enactment on which the case was decided.

Sect. 46 (1)*e* of the Act of 1894, as respects the nature of the interest that is to disqualify appears to be taken in substance from an enactment in the Public Health Act, 1875 (38 & 39 Vict. c. 55. Sched. II., r. 64, now repealed), which provided that subject to certain exceptions a member of a local board who "in any manner is concerned in any bargain or contract entered into by such board, or participates in the profit thereof, or of any work done under the authority of this Act in or for the district" of the local board, should cease to be a member of the board.

A contract with an authority will apparently, under the enactment, entail the disqualification of a person concerned in it although, owing to some informality, it may be unenforceable. *Reg. v. Francis* (1852), 18 Q. B. 526; 21 L. J. Q. B. 304; 16 Jur. 1045.

The two following cases may be referred to on the question whether the disqualification in respect of a contract will cease when the contract is completely executed, and it merely remains for the contractor to receive payment.

The first of these cases (*Le Feuvre v. Lankester* (1854), 3 E. & B. 530; 2 C. L. R. 1426; 23 L. J. Q. B. 254; 18 Jur. 894; 2 W. R. 307) arose under enactments now repealed and replaced by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50, see s. 12), providing that, subject to certain exceptions, a person should not "be qualified to be elected or to be" a councillor or alderman of a borough "during such time as he" should "have directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by,

or on behalf of" the council of the borough (5 & 6 Will. IV. c. 76, 62 & 63 Vict. s. 28), but that a person should not be disqualified under the foregoing c. 14, s. 2; enactment "by reason only of his having or having had . . . any share (5), n. or interest . . . in any security for the payment of money only" (5 & 6 Vict. c. 104, s. 7). One L. contracted with commissioners for supplying a borough with water, to execute works for them, but gave up the contract after executing portions of the works, and it was agreed between him and the commissioners by deed that they should pay him a certain balance in certain events. The deed contained mutual releases, and covenants by L. not to molest the commissioners, that he had not injured the title, and for further assurances. The council of the borough subsequently succeeded to the powers, &c., of the commissioners and became bound to L. under this deed. It was held that L. was not disqualified to be a councillor of the borough, as the deed in question was a "security for the payment of money only," the covenants on L.'s part being merely ancillary to the main object of the deed.

In the second case (*Royse v. Birley* (*Manchester election petition*) (1869), L. R. 4 C. P. 296; 38 L. J. C. P. 203; 20 L. T. 786; 17 W. R. 827), which arose under an enactment (22 Geo. III. c. 45, s. 1), which disqualifies for membership of the House of Commons any person who contracts for the public service "during the time that he shall execute, hold or enjoy any such contract . . . or any benefit or emolument arising from the same," it was held that a person was not disqualified who had completely executed a contract for the public service but had not received the payment due to him under it.

It seems that the sect. 46 (1)*e* of the Act of 1894 has the effect of disqualifying for membership of an authority not only persons who themselves contract with the authority, but also any person who wittingly executes work or supplies goods for the authority under a sub-contract with such persons.

This was held to be the effect of the provision in the Public Health Act, 1875 (38 & 39 Vict. c. 55, Sched. II., r. 64), quoted *ante*, p. 30, in *Tomkins v. Jolliffe* (1887), 51 J. P. 247, where a contractor agreed with a local board to make alterations in certain gas fittings and employed a member of the board to erect the necessary scaffolding; and it was decided accordingly that the latter thereby became disqualified for membership of the board.

This decision was followed in the Court of Appeal in the subsequent case of *Nutton v. Wilson* (1889), 22 Q. B. D. 744; 58 L. J. Q. B. 443; 37 W. R. 522; 53 J. P. 644, on the same enactment where the circumstances were very similar. *Cf. West v. Andrews* (1822), 5 B. & Ald. 328; *Towsey v. White* (1826), 5 B. & C. 125; 7 D. & R. 810.

In the earlier case of *Le Feuvre v. Lankester*, *ante*, p. 30, on the other hand, decided under sect. 28 of the Municipal Corporations Act, 1835 (5 & 6 Will. IV. c. 76), the material parts of which are set out *ante*, p. 30, it was held that a person who had sold some iron to a contractor to be used in the erection of railings which the contractor had agreed to erect for a borough council was not disqualified for membership of the council.

With regard to the meaning of being "concerned" in a contract the following further cases may be referred to.

In *Hunnings v. Williamson* (1883), 11 Q. B. D. 533; 52 L. J. Q. B. 416; 49 L. T. 361; 32 W. R. 267; 48 J. P. 132, decided under a provision in the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120, s. 54), now repealed, enacting that, in case any member of a

62 & 63 Vict. c. 14, s. 2 (5), n. metropolitan vestry should "in any manner be concerned or interested in any contract or work made with or executed for" such vestry, he should cease to be a member thereof, a person who had lent money to a contractor for the purpose of enabling him to carry out a contract with a vestry, and had taken an assignment of the contract by way of security for the loan, was held to be disqualified for membership of the vestry.

In *Cox v. Ambrose* (1890), 60 L. J. Q. B. 114; 55 J. P. 23, decided under a section of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50, s. 12), providing that "a person shall be disqualified for being elected and for being a councillor, if and while he . . . has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council" of the borough, a person was held to be disqualified who had, in partnership with another, contracted with the council, but had dissolved the partnership and assigned the contracts to his former partner, remaining liable however, under the contracts and the bonds securing the due performance of the same, to the council, who were not parties to the assignment.

The following cases may be referred to on the question as to what amounts to a "contract" within the meaning of the section.

In *Simpson v. Ready* (1844), 12 M. & W. 736; 1 D. & L. 1024; 13 L. J. Ex. 193, a person was held to be disqualified for the office of councillor of a borough under the provisions of the Municipal Corporations Act, 1835 (5 & 6 Will. IV. c. 76, s. 28), already quoted, where a lease of certain premises had been granted by the council to a trustee for his benefit, there being no exception when that case was decided in favour of a person merely interested in a lease.

In *Woolley v. Kay* (1856), 1 H. & N. 307; 25 L. J. Ex. 251, under a local Act providing that no person should be capable of acting as a commissioner in the execution of the Act who should be interested in any contract for furnishing, supplying or selling any article, matter or thing to be employed or made use of for the purposes of the Act, it was held that a person who had contracted with the commissioners to sell them a plot of land to be used for the purposes of the Act was not disqualified from acting, though the conveyance had not been executed.

In *Nicholson v. Fields* (1862), 7 H. & N. 810; 31 L. J. Ex. 233; 10 W. R. 304, under the Commissioners' Clauses Act, 1847 (10 & 11 Vict. c. 16, s. 9), which provided that "any person who at any time after his appointment or election as a commissioner shall . . . be concerned or participate in any manner in any contract . . . under the authority of the" special Act incorporating the enactment, "shall thenceforth cease to be a commissioner," it was held that an invoice in the handwriting of the defendant, charging the commissioners for lime supplied to them on several occasions during four months, was evidence that the defendant was concerned, or had participated, in a contract with the commissioners.

In *Fletcher v. Hudson* (1881), 7 Q. B. D. 611; 51 L. J. Q. B. 48; 46 L. T. 125; 30 W. R. 349; 46 J. P. 372, under the above-quoted provisions of the Public Health Act, 1875 (38 & 39 Vict. c. 55, Sched. II. r. 64), it appeared that H. did work for a local board at the request of their surveyor, because the surveyor was unable to get the work done by any one else in the time, and delay would have occasioned great expense, that H. made no regular bargain as to the work, that he was paid some £10 for it, and that he made no profit out of the



transaction; and it was held that there was ample evidence that H. 62 & 63 Vict. was concerned in a contract with the board. c. 14, s. 2

In *Nell v. Longbottom* [1894], 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. 499, under the provisions of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50, s. 12), already referred to, it appeared that one G. was appointed chemist to a municipal corporation, and that, in virtue of such appointment, he was entitled to supply goods in the way of his business to the police and the fire brigade. G. was afterwards elected a member of the town council, but did not resign his appointment as chemist to the corporation; and it appeared that on one occasion he had, after his election, supplied four pennyworth of oil to a member of the fire brigade on behalf of the corporation. It was held that G. was disqualified. (51, n.)

*Saving for medical practitioners.*—The Infectious Disease (Notification) Act, 1889 (52 & 53 Vict. c. 72, s. 11), provides that a payment made to any medical practitioner in pursuance of that Act shall not disqualify that practitioner for serving as member of the council of any county or borough, or as member of a sanitary authority, as guardian of a union, or in any municipal or parochial office. And there is a similar saving in the Public Health London Act, 1891 (54 & 55 Vict. c. 76, s. 57), by which the Act of 1889 is repealed and replaced as regards London. It seems, however, that savings of this kind are superfluous, with reference to sect. 46 of the Local Government Act, 1894, and similar enactments, since the receipt of a statutory fee from a local authority is neither being concerned in a contract with the authority, nor participating in work done under the authority.

*Interest in lease.*—It was held in *Reg. v. Gaskarth* (1880), 5 Q. B. D. 321; 49 L. J. Q. B. 509; 42 L. T. 688; 28 W. R. 596; 44 J. P. 507, on words in the Public Health Act, 1875 (38 & 39 Vict. c. 55, Sched. II. r. 64), precisely similar to those in the first part of subsect. (2, a) of sect. 46 of the Local Government Act, 1894, that the exception was not confined to the case of a lease to a local board but extended to a lease from the board: where accordingly a member of a local board took a sewage farm on lease from them, he was held to be entitled to continue to hold his seat on the board. The lease in question contained covenants on the lessee's part as to the disposal of sewage, &c., but it was held that these covenants were ancillary to the main object of the lease and that the lessee was therefore not disqualified by reason of having entered into the same.

In *Nell v. Longbottom*, *supra*, which arose under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50, s. 12), it was held that a member of a town council who let a building to the council for one day for the purposes of a polling-station, did not become disqualified, as the case came within the exception in favour of a lease of land.

*Interest in contract for transport of highway materials.*—In *Buckley v. Hanson* (1898), 77 L. T. 664; 62 J. P. 119, proceedings were taken against a member of a rural district council who had contracted with the council for the transport of road materials in his own immediate neighbourhood, for a penalty under sect. 46 of the Highway Act, 1835 (5 & 6 Will. IV. c. 50), which imposes a penalty on a surveyor of highways interested in contracts of the kind without obtaining a licence from justices. It was held that the councillor could not be convicted. The Court gave no reason for their decision, but it seems sufficiently obvious that, although a rural district council in their corporate capacity act in the office of highway surveyor, an individual councillor is not a highway surveyor.

*Vacation of seat for absence.*—In *Richardson v. Methley School Board*

62 & 63 Vict. [1893], 3 Ch. 510; 62 L. J. Ch. 943; 69 L. T. 308; 42 W. R. 27, which arose under an enactment in the Elementary Education Act, c. 14, s. 2 1870 (33 & 34 Vict. c. 75, sched. II., Pt. 1, r. 14), providing that a member of a school board shall cease to be a member if he "absents himself during six successive months from all meetings of the board, except from temporary illness or other cause to be approved by the board," it was held that the school board could not treat a seat as vacant on account of the continuous absence of a member without giving him an opportunity of explaining his absence.

In that case a member had been present, sitting among the public, at a meeting for a quarter of an hour, during which time several resolutions were passed, on which, however, he did not vote, and the minutes, signed by the chairman, described him as having been present but as having "remained neutral" on the questions arising; and Kekewich, J., expressed the opinion that this was sufficient to prevent his losing his seat, though "a member of the board cannot save his position by merely looking in casually and taking no part in the proceedings, and being present only a few minutes out of a long meeting. What is sufficient attendance must be decided according to the circumstances of each particular case."

*Disqualifications under other statutes.*—The Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51, ss. 4, 6 (3), 38 (5), 43 (4)), and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70, ss. 2, 3, 8 (2), 23, 28 (4), 35, 36, and see 51 & 52 Vict. c. 41, s. 75; 56 & 57 Vict. c. 73, s. 48), disqualify persons found guilty of various offences against election law at parliamentary and other elections for any "public office;" and define the expression "public office" in terms that will include membership of the council of a metropolitan borough (see 46 & 47 Vict. c. 51, s. 64; 47 & 48 Vict. c. 70, s. 34).

The Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict. c. 69, s. 2), provides that a person convicted under that Act may be adjudged incapable of holding a "public office," and defines the expression "public office" in terms that will include membership of the council of a metropolitan borough.

By sect. 88 of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), persons are prohibited from voting as members of a local authority or any committee thereof upon any question arising under Parts I. or II. of that Act which relates to premises in which they are beneficially interested.

*Vacation of office upon disqualification.*—It is submitted that subsect. (7) of sect. 46 of the Local Government Act, 1894, does not extend to a case where a member of an authority merely ceases to hold the necessary qualification for the office, but that it is confined to cases where such a person becomes positively disqualified under the section or some such enactment as those above referred to. See sects. 3 (8) and 79 (8) of that Act, in the former of which clauses "ceasing to be qualified" and "becoming disqualified" are mentioned as if they were different things, and in the latter of which clauses "want of qualification" can hardly include positive disqualification. See also *Harford v. Linskey* [1899], 1 Q. B. 852; 68 L. J. Q. B. 599; 80 L. T. 417; 63 J. P. 263, where Wright J. in the course of his judgment distinguishes between disqualification and want of qualification. At the same time in *Stamford v. Williams*, Loc. Govt. Chron. (1899), 467, it seems to have been assumed that sect. 46 (8) of the Act of 1894, applies where there is a mere want of qualification; but the point was not raised, and counsel for the respondent, who, as the

writer understands, was prepared to argue the point, was stopped at an early stage of his argument. 62 & 63 Vict. c. 14, s. 2 (5), n.

It seems that where a member of an authority to which the above section applies becomes disqualified for his office, or vacates his seat for absence, the office must be properly declared vacant under sub-sect. (7) before an election can be held to fill the vacancy; and that an attempt on the part of the member who has become disqualified, or has vacated his seat for absence, to resign his office will be inoperative, and will not obviate the necessity of declaring the office vacant. See *Hardwick v. Brown* (1873), L. R. 8 C. P. 406; 28 L. T. 502; 21 W. R. 639; *Reg. v. Welchpool Corporation* (1876), 35 L. T. 594.

*Penalty.*—In *Leavis v. Carr* (1876), 1 Ex. D. 484; 46 L. J. Ex. 314; 36 L. T. 44; 24 W. R. 940, which arose under the provisions of the Municipal Corporations Act, 1835 (5 & 6 Will. IV. c. 76, s. 28), quoted above, and another section of the same Act (*Ib.* s. 53), which provided that if any person should act as councillor after he should have “become disqualified” he should forfeit the sum of £50, it was held that no penalty was incurred by a councillor, who entered into a contract with his council, in respect of acts done by him as councillor after the contract had come to an end.

In *Charlesworth v. Rudgard* (1834), 1 C. M. & R. 498; 4 Tyr., s. 24; 4 L. J. Ex. 89, a member of an authority speaking at a meeting as a member but not voting was held to “act” as a member in a case arising under a local Act imposing a penalty on members of an authority who should act in matters in which they were interested.

A person disqualified at the time of his election and continuing to be so disqualified will be liable to penalties under sub-sect. (8), although the time within which his election may be questioned by petition is gone by. See *De Souza v. Cobden* [1891], 1 Q. B. 687; 60 L. J. Q. B. 533; 65 L. T. 130; 39 W. R. 454; 55 J. P. 565.

In *Hunnings v. Williamson*, *ante*, p. 31, the fact that a member of a metropolitan vestry had signed the attendance book and had attended a meeting at which business was transacted was held to be evidence that he had acted as a member.

It seems to be open to any person to proceed for penalties under sub-sect. (8) (see *Reg. v. Stewart* [1896], 1 Q. B. 300; 65 L. J. M. C. 83; 74 L. T. 54; 44 W. R. 368; 60 J. P. 356); but the person taking the proceedings is not entitled to any part of the penalty.

It is submitted that sub-sect. (8) applies only in the case of a positive disqualification for office and not where there is a mere want of qualification: see the observations on sub-sect. (7) *supra*.

**Consequences of Disqualification or Want of Qualification.**—As to the consequences of disqualification or want of qualification, see further the note to sub-sect. (2), *ante*, pp. 9, 10.

**Election, etc.**—The principal enactments that will apply to the election of councillors of a metropolitan borough are sects. 23 (4, 5), 31 (1), and 48 of the Local Government Act, 1894, and the enactments referred to in those sections.

By sect. 23 (4, 5), which sub-sections apply primarily to elections of urban district councillors, “each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected,” and “the election shall, subject to the provisions of this Act, be conducted according to rules framed under this Act by the Local Government Board.” These provisions are extended to members of elective vestries in London by sect. 31 (1), which provides

62 & 63 Vict.  
c. 14. s. 2  
(5). 11.

that "the provisions of this Act . . . with respect to the qualifications of the electors of urban district councillors . . . and with respect to the mode of conducting the election, shall apply as if members of . . . the vestries elected under the Metropolis Management Acts, 1855 to 1890, or any Act amending those Acts . . . were urban district councillors. . . . Provided that the Elections (Hours of Poll) Act, 1885, shall apply to elections to the said vestries."

The Elections (Hours of Poll) Act, 1885 (48 Vict. c. 10), merely requires the poll to be kept open from 8 A.M. to 8 P.M. and no longer.

Sect. 48 of the Act of 1894, with the omission of such parts as have clearly no application to elections of members of a metropolitan vestry, is as follows:—

"(2.) Rules framed under this Act by the Local Government Board in relation to elections shall, notwithstanding anything in any other Act, have effect as if enacted in this Act, and shall provide, amongst other things:—

- (i.) for every candidate being nominated in writing by two parochial electors as proposer and seconder and no more;
- (ii.) for preventing an elector at an election for a union or for a district not a borough from subscribing a nomination paper or voting in more than one parish or other area in the union or district;

\* \* \* \* \*

- (iv.) for fixing or enabling the county council to fix the day of the poll . . . ;
- (v.) for the polls at elections held at the same date and in the same area being taken together, except where this is impracticable;
- (vi.) for the appointment of returning officers for the elections.

"(3.) At every election regulated by rules framed under this Act, the poll shall be taken by ballot, and the Ballot Act, 1872, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and sections seventy-four and seventy-five and Part IV. of the Municipal Corporations Act, 1882, as amended by the last-mentioned Act (including the penal provisions of those Acts) shall, subject to adaptations, alterations, and exceptions made by such rules, apply in like manner as in the case of a municipal election. Provided that—

- (a) section six of the Ballot Act, 1872, shall apply in the case of such elections, and the returning officer may, in addition to using the schools and public rooms therein referred to free of charge, for taking the poll, use the same, free of charge, for hearing objections to nomination papers and for counting votes; and
- (b) section thirty-seven of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, shall apply as if the election were an election mentioned in the First Schedule to that Act.

"(4.) The provisions of the Municipal Corporations Act, 1882, and the enactments amending the same, with respect to the expenses of elections of councillors of a borough, and to the acceptance of office, resignation, re-eligibility of holders of office, and the filling of casual vacancies, and section fifty-six of that Act, shall, subject to the adaptations, alterations, and exceptions made by the said rules, apply in the case . . . of members . . . of a vestry under the Metropolis

Management Acts, 1855 to 1890, and any Act amending the same. 62 & 63 Vict.  
 Provided that—

c. 14, s. 2  
 (5), n.

- (b) nothing in the enactments applied by this section shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election.

“(5.) If any difficulty arises as respects the election of any individual . . . member of any such . . . vestry as aforesaid . . . and there is no provision for holding another election, the county council may order a new election to be held and give such directions as may be necessary for the purpose of holding the election.

“(6.) Any ballot boxes, fittings, and compartments provided by or belonging to any public authority, for any election (whether parliamentary, county council, municipal, school board, or other), shall, on request, and if not required for immediate use by the said authority, be lent to the returning officer for an election under this Act, upon such conditions and either free of charge or, except in the prescribed cases, for such reasonable charge as may be prescribed.

“(7.) The expenses of any election under this Act shall not exceed the scale fixed by the county council, and if at the beginning of one month before the first election under this Act a county council have not framed any such scale for their county, the Local Government Board may frame a scale for the county, and the scale so framed shall apply to the first election, and shall have effect as if it had been made by the county council, but shall not be alterable until after the first election.”

It will be observed that the rules framed under this section by the Local Government Board are to have effect “as if enacted in this Act.” This provision prevents any question being raised as to whether the rules framed by the Board are *intra vires*. See *Institute of Patent Agents v. Lockwood* [1894], A. C. 347; 63 L. J. P. C. 74; 71 L. T. 205.

The rules framed by the Local Government Board for the election of members of metropolitan vestries at present in force are contained in an order of the Board dated March 25, 1898, entitled the Vestrymen and Auditors (London) Election Order, 1898. The Board will no doubt issue an order expressly dealing with elections of councillors under the present Act, before such elections are held, and it has therefore been thought unnecessary to include the above-mentioned Order of 1898 in the present work. Since, however, the new election Order will in all probability closely follow the Order of 1898, some general account of its provisions may be given.

The Order deals not only with elections of vestrymen, but also with elections of auditors and of members of the Local Board of Woolwich. Under the present Act auditors will no longer be elected, and Woolwich is to be a metropolitan borough.

After reciting provisions of the Local Government Act, 1894, relating to the elections with which it deals, the Order provides that, subject to any directions which may be given by the Local Government Board, and until the Board otherwise orders, the rules in the Order shall apply to and be observed in connection with

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the elections to which the Order relates; and contains a series of rules forming the body of the Order, a schedule of times for the proceedings at elections, a schedule of forms, and three other schedules setting out modified versions of enactments mentioned in sect. 48 of the Local Government Act, 1894, and applied to the elections in question.

The provisions that the rules in question shall apply "subject to any directions which may be given by" the Local Government Board is important, as it reserves to the Board a power of dispensing in an informal manner with the requirements of the Order in any particular case.

The rules in the body of the Order are 33 in number.

Rule 1 contains provisions as to returning officers and their deputies. In general the clerk of the vestry is to be the returning officer.

Rules 2-6 are concerned with the nomination of candidates. These rules carry out the requirements in sect. 48 (2, i) of the Local Government Act, 1894, by providing that each candidate is to be nominated in writing by two parochial electors of the parish or ward for which an election is held. They further provide that a parochial elector is not to sign a nomination paper for more than one ward in the parish, thus showing that the Local Government Board interpret sect. 48 (2, ii) of the Act of 1894 as applying to elections of vestrymen. Whether this interpretation of the clause is right is immaterial, since the rules, as has been mentioned, have statutory force.

Rule 7 provides for the publication of a statement as to the persons nominated.

Rule 8 provides for the withdrawal of candidates. Under this rule candidates cannot withdraw later than a certain time before the day of election.

Rule 9 consists in an adaptation of sect. 56 of the Municipal Corporations Act, 1882 to the elections in question. It provides that if the number of candidates who are duly nominated and have not withdrawn exceeds the number of persons to be elected, the vestrymen are to be elected from among those candidates, and that if the number of candidates duly nominated as reduced by any withdrawals does not exceed the number of persons to be elected, the candidates nominated shall be deemed to be elected. It also provides for the continuance in office of outgoing vestrymen, where there are no candidates, or where the number of candidates is less than that of vacancies.

Rule 10 provides that polls for the election of vestrymen and of auditors shall be taken together.

Rules 11 and 12 are concerned with the division of the parish or ward into polling districts, and with the determination of the number and situation of the polling places and polling stations. Rule 12, it may be mentioned, prohibits the use as polling stations of premises licensed for the sale of intoxicating liquor.

Rule 13 provides for public notice of the poll.

Rule 14 provides for the appointment of presiding officers for the purpose of the poll.

Rule 15 deals with the provision of certain polling requisites.

Rule 16 deals with the appointment of polling agents by the candidates. It limits the number of polling agents that may be appointed to a certain small number, varying according to the number of candidates, for each polling station, and thus makes it practically necessary for candidates to arrange among themselves for the appointment of one or two polling agents to protect the interests of a large number of candidates. Of course this is practically done by the

appointment of one or two polling agents for each station to protect the interests of each party. 62 & 63 Vict. c. 14, s. 2

Rule 17 prescribes the questions that may be put to an elector on his presenting himself to vote. (5), n.

Rule 18 deals with the counting of the votes.

Rule 19 provides for cases where there is an equality of votes between candidates.

Rules 20 and 21 deal with the publication of the result of the poll, and of the result of the election.

Rule 22 deals with cases where casual vacancies are filled at an ordinary election, providing, to put it shortly, that the successful candidates polling the smallest number of votes shall be deemed to be elected to fill the casual vacancies. The necessity for determining which of the candidates are to be deemed to fill the casual vacancies arises from the fact that the persons elected to fill these vacancies hold office for less than the full period. The provision meets the difficulty that arose in *Roxley v. Reg.* (1844) 6 Q. B. 668; 14 L. J. Q. B. 62; 8 Jur. 1170, and *Reg. v. Rippon* (1876), 1 Q. B. D. 217; 45 L. J. Q. B. 188; 34 L. T. 444; 24 W. R. 363. In this connection it may be observed that sect. 10 of the Metropolis Management Act, 1855, which provides that, at an election of vestrymen, as many vestrymen are to be elected as there are vacancies, whether such vacancies be occasioned by expiration of the term of office or by death or otherwise, is not expressly repealed. Further, as to the provisions of the Order dealing with casual vacancies, see the quotation from rule 24, *infra*, and see also *post*, p. 42.

Rule 23 deals with the application of the Ballot Act, 1872 (35 & 36 Vict. c. 33), to the elections in question. It provides that "the provisions of the Ballot Act, 1872, which, with adaptations and alterations, are set out in the third schedule to this Order, and only such provisions of that Act, shall, subject to such adaptations and alterations and to the provisions of this Order, apply to the elections of vestrymen and auditors in like manner as in the case of a municipal election." Further, with regard to the application of the Ballot Act, see *post*, p. 40.

Rule 24 is concerned with the application of portions of the Municipal Corporations Act, 1882, to the elections in question. Clause (1) of the rule provides that: "The provisions of sections 74 and 75 of the Municipal Corporations Act, 1882, which, with adaptations and alterations, are set out in the fourth schedule to this Order, shall, subject to such adaptations and alterations, apply to the elections of vestrymen and auditors; and such of the provisions of that Act as relate to the acceptance of office, resignation, re-eligibility of holders of office, and filling of casual vacancies, and are, with adaptations and alterations, set out in the fifth schedule to this Order, shall, subject to such adaptations and alterations, apply to the election of vestrymen and to the persons elected or deemed to be re-elected thereat."

Clause (2) of the rule provides that: "In the application of Part IV. of the Municipal Corporations Act, 1882 (relating to corrupt practices and election petitions), as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, the following adaptations and alterations shall have effect:—" The clause then prescribes certain modifications and alterations in Part IV. of the Act of 1882, chiefly of a purely formal character. Further as to the application of the Municipal Corporations Act, 1882, to the elections in question, see *post*, pp. 41, 42.

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Rule 25 deals with the application of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, to the elections in question. It provides that: "In the application of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, the following adaptations and alterations shall have effect":—Then follow several clauses containing the adaptations and alterations referred to, which are chiefly of a formal character. Further as to the Act, see *post*, p. 42.

Rule 26 deals with the expenses of the election. It provides that: "Any sum which may be payable to the returning officer in respect of his services in the conduct of the election, or in respect of expenses incurred in relation to the election, shall be defrayed by order of the vestry out of the poor rate of the parish." See further as to the expenses of elections, *post*, p. 42.

Rule 27 contains provisions as to the application of the Order where a parish is divided into wards.

Rule 28 applies the Order to elections of the Woolwich Local Board.

Rule 29 prescribes the manner in which notices under the Order are to be published.

Rule 30 provides that in place of any signature required by the Order it shall be sufficient for the signatory to affix his mark if the same is witnessed by two parochial electors.

Rule 31 contains a saving for a notice or nomination paper containing a misnomer or an inaccurate description of a person or place.

Rule 32 defines "vestry clerk," "day of election," and "ordinary election."

Rule 33 provides for the adaptation of forms in the case of an election other than an ordinary election.

The first schedule to the Order contains tables of the times for the proceedings at elections.

The second schedule contains forms for nomination papers and various notices and other documents.

The third schedule contains the modified version of certain provisions of the Ballot Act, 1872, mentioned in rule 23 of the body of the Order above quoted and thereby applied to the elections under the Order. The portions of the Ballot Act, set out with modifications in the schedule are, in whole or in part, sects. 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 24, and 28; rules 15, 17, 18, 20-43, 47-55, in the first schedule; and certain forms in the second schedule. The numbering of the sections, schedules, and rules in the original Ballot Act is retained. This plan of dealing with the Act has advantages, but it renders citation of the provisions applicable to elections of metropolitan vestrymen exceedingly cumbersome. For example: "Rule 26 of the first schedule to the Ballot Act, 1872, as set out with adaptations in the third schedule to the Vestrymen and Auditors (London) Election Order, 1898," seems as short a way of accurately describing the clause containing the provisions applicable to voting by illiterate voters at an election of metropolitan vestrymen as can be devised.

The provisions of the Ballot Act, 1872, applied to the elections in question include in substance all the provisions of the Act applicable to a municipal election with the exception of a portion of sect. 1 of the Act dealing with cases where a candidate dies after the time for the withdrawal of candidates has elapsed but before the poll. The portion of the section in question seems to have been generally regarded as inapplicable to a municipal election, until in *Reg v. Stewart*, [1898] 1 Q. B. 552; 78 L. T. 256; 62 J. P. 229; S. C. nom. *Westcott v. Stewart*, 67 L. J. Q. B. 421; 46 W. R. 379, decided very shortly



before the issue of the Order, it was held, somewhat unexpectedly, 62 & 63 Vict. that it applies to a municipal election. In view of this decision it seems *c. 14, s. 2* very possible that the part of the section in question will be included (5), n. in any future election order issued by the Local Government Board.

The adaptations introduced into the Ballot Act for the purposes of its application to the elections in question are mainly of a formal character; though there are one or two substantive alterations of some importance.

The fourth schedule to the Order contains the modified version of sects. 74 and 75 of the Municipal Corporations Act, 1882, referred to in rule 24 (1) of the body of the order. Sect. 74 provides for the punishment of offences connected with nomination papers, such as the forgery of a nomination paper. Sect. 75 imposes a penalty on a returning officer or deputy returning officer who neglects or refuses to conduct or declare the election in accordance with the Act of 1894 and the Order.

The fifth schedule to the Order contains modified versions of the provisions of the Municipal Corporations Act, 1882, with respect to the acceptance of office, resignation, re-eligibility of holders of office, and filling of casual vacancies referred to in rule 24 (1) of the body of the order. In this schedule the original numbering of the sections of the Act of 1882 is retained, but the order of the sections is varied. The sections of the Act included are: sects. 34, 35, 239 and 41 dealing with the acceptance of office; sect. 36 dealing with resignation; sect. 37 dealing with the re-eligibility of office holders; and sects. 40 and 66 dealing with casual vacancies.

Sect. 34, as adapted, requires every person elected to the office of vestryman, unless exempt, to accept office by making and signing a declaration in a prescribed form within one month after notice of being elected, or in lieu thereof to pay a fine. It further provides, however, that a person who has been nominated and elected without his consent to his nomination having been previously obtained, shall not be liable to the fine. This provision, which does not occur in the section in its original form, renders the obligation to accept office of little importance. The section, as adapted, further provides, *inter alia*, that if a person is elected vestryman for more than one ward, he shall not accept office for more than one ward. This provision, coupled with a provision in sect. 40 (3) as adapted, that non-acceptance of office creates a casual vacancy, appears to supersede the provisions in sect. 39 of the Metropolis Management (Amendment) Act, 1862, as to cases where a person is elected vestryman for more than one ward; but that section is not expressly repealed.

Sect. 35, as adapted, prescribes the form of declaration of acceptance of office; provides for the persons before whom it is to be made: and prohibits a person elected from acting in office before he has made the declaration.

Sect. 239, as adapted, gives the persons before whom the declaration is to be made power to receive it, and provides for the transmission of the declaration to the clerk to the vestry in certain cases.

Sect. 41, as adapted, imposes a penalty on a person acting in office before making the required declaration.

Sect. 36, as adapted, enables a vestryman to resign his office on payment of the fine provided for non-acceptance thereof. As to the resignation of office, reference may be made to the cases cited *ante* p. 16, in connection with the resignation of the mayor and aldermen.

Sect. 37, as adapted, provides that "a person ceasing to hold the office of vestryman shall, unless disqualified to hold the office, be re-

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eligible." This is doubtless intended as a mere saving to prevent its being supposed that an outgoing vestryman is ineligible for a further term of office; but it is capable of being read as rendering an outgoing vestryman eligible for re-election even though he has not the qualification necessary in ordinary cases.

Sect. 40, as adapted, provides that "on a casual vacancy in the office of vestryman, an election shall be held in accordance with the Vestrymen and Auditors (London) Election Order, 1898; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office"; the section further provides for cases where two or more casual vacancies are filled at one election, and provides that non-acceptance of office creates a casual vacancy.

Sect. 66, as adapted, provides that "on a casual vacancy in the office of vestryman, the election shall be held within one month after notice in writing of the vacancy has been given to the chairman of the vestry or to the clerk by two vestrymen. The day of election shall be fixed by the clerk to the vestry"; and the section also contains a repetition in terms of sect. 48 (4 *b*) of the Local Government Act, 1894.

The provisions of sect. 66, as adapted, with reference to the time within which an election to fill a casual vacancy is to be held, give rise to some difficulty in cases where the vestrymen refrain from giving notice of the occurrence of a casual vacancy. In such cases it is doubtful whether the clerk to the vestry has power to proceed to the election, and, if he has the power, whether it is his duty to proceed to the election. The writer is not aware whether this difficulty has actually arisen with reference to vestrymen; but it has arisen not infrequently in reference to district councillors, to whom similar provisions are applicable, the councillors frequently refraining from giving notice of a casual vacancy on the council, with the object of sparing the district the expense and trouble of a special election. The difficulty does not practically arise under the section in its original form; since in its original form it provides for the notice being given by any two burgesses; so that, if there is any desire on the part of those interested that there should be an election, persons can always be found to give the notice.

Clause (b) of sect. 48 (4) of the Local Government Act, 1894, which is repeated in sect. 66 of the Act of 1882, as adapted, is ambiguous. The Local Government Board at first expressed the opinion that the clause applied whenever a casual vacancy occurred within six months before an ordinary election. But the law officers of the Crown have since advised that it applies only where the person whose death or retirement causes the casual vacancy, would himself have gone out of office at that election. But even if the person whose death or retirement causes a casual vacancy would not have retired in ordinary course at the next election, rule 23 of the Order, quoted above, renders it unnecessary to hold a special election to fill the vacancy if the ordinary election will be held within the time prescribed in ordinary course for filling casual vacancies.

*Expenses of Elections.*—The provisions as to the expenses of elections of the London vestrymen are in a very unsatisfactory state.

Under sect. 48 (4) of the Local Government Act, 1894, the rules to be framed for such elections are to apply to the provisions of the Municipal Corporations Act, 1882, and the amending Acts as to the expenses of elections.

The provisions alluded to appear to be those in sect. 140 and 62 & 63 Vict. the fifth schedule, Part II (1) of the Act of 1882, whereby the borough fund is made applicable to, and is charged with, the payment (5), n. *inter alia* of the expenses incurred by the town clerk and other municipal authorities in relation to the holding of municipal elections.

There is, however, no provision in the Order of 1898 above referred to, which contains the rules regulating elections of metropolitan vestrymen, purporting to apply these provisions of the Act of 1882 to the expenses of such elections.

By rule 26 of the Order of 1898, however, it is provided that "any sum which may be payable to the returning officer in respect of his services in the conduct of the election, or in respect of expenses incurred in relation to the election, shall be defrayed by order of the vestry out of the poor rate of the parish." And this is the only provision in any sense providing for the payment of the expenses in question.

It is to be observed that the rule does not contemplate that the vestry should themselves directly defray any expenses in relation to the election; but that these expenses should be defrayed by the returning officer, and that he should be repaid out of the poor rate under order of the vestry. It is also contemplated that he should be paid some remuneration for his services in addition to the expenses he incurs. And, no doubt, there must be some implied right in the returning officer to be repaid his expenses properly incurred in the matter and to be paid some remuneration.

By sect. 48 (7) of the Local Government Act, 1894, the expenses of an election under that Act are not to exceed the scale fixed under that sub-section.

The London County Council have fixed two scales under this sub-section for the purpose of elections of vestrymen, one dealing with ordinary elections, the other with elections to fill casual vacancies. No doubt, the County Council may very possibly frame new scales with reference to elections of borough councillors, but if they do not the scales already framed will, it seems, apply to these elections.

The scale fixed by the London County Council with reference to ordinary elections of vestrymen is as follows:—

"SCALE OF EXPENSES fixed by the London County Council under section 48 (7) of the Local Government Act, 1894, to be allowed to returning officers in relation to the holding of the first general election and of subsequent annual elections of Vestrymen under the provisions of the said Act.

#### "CONTESTED WARD ELECTIONS.

"1. For hire of rooms or buildings for polling or expenses attending the use of such rooms or buildings. Actual cost.

"NOTE.—*The amount to be paid in respect of the use of any school receiving a grant out of moneys provided by Parliament or out of a local rate by way of expenses for the use of such school should not exceed 21s. in the season when heating as well as lighting is required, and 15s. in the season when heating is not required.*

"2. For fitting up a polling station. Actual cost.

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	Actual cost.
"3. For each ballot box (whether purchased or hired)	Not exceeding 17s. 6d. when not more than six names, and 1s. 6d. for every additional name.
NOTE.— <i>No ballot box must be purchased or hired if there are a sufficient number in the possession of the parochial authorities.</i>	
"4. For printing and providing ballot papers, per thousand.	Not exceeding 3s. 6d.
"5. For stationery at each polling station.	Actual cost.
"6. For each stamping instrument	The sums payable by statute for the necessary copies.
"7. For copies of the register	Not exceeding £2 10s.
"8. For each presiding officer (to include all expenses)	Not exceeding £1.
"9. For each clerk at a polling station (to include all expenses)	2s. per hour.
"10. For every person employed in counting votes (to include all expenses)	1s. per mile, with a minimum of 2s. for each polling station.
"11. For conveyance of ballot boxes	<i>At the first election (of the whole body).</i>
"12. General fee for conducting the election, preparing and publishing all notices, preparing and supplying nomination papers, distributing, filling up, verifying, and adjudicating on same, conducting poll, declaring result and making return, to include all expenses for professional and other assistance, travelling expenses, and all other costs, charges, and expenses whatsoever incurred in and about the conduct of the election, save and except the items for which special provision has been hereinbefore made.	Not exceeding £8 for each contested ward, and an additional £1 for every 500 registered electors or fraction thereof above 2000 in each contested ward.
NOTE.— <i>In the case of an undivided parish or of a parish divided into only two wards a general fee not exceeding £25 may, if the remuneration according to this scale appear to the Vestry inadequate, be paid to the returning officer.</i>	
" UNCONTESTED WARD ELECTIONS.	
"A general fee to include all costs, charges and expenses whatsoever incurred in and about the conduct of the election.	<i>At an election of one-third of the body.</i>
"NOTE.— <i>The word 'ward' in the foregoing scale includes any other electoral area for the election of guardians, e.g., a parish or place, or group of parishes and places.</i> " <sup>1</sup>	Not exceeding £7 for each contested ward, and an additional £1 for every 500 registered electors or fraction thereof above 2000 in each contested ward.
	Not exceeding £4 for each uncontested ward.

(1). This note appears to have been inserted in error. The scale has no reference to the expenses of elections of guardians.

The scale for elections to fill casual vacancies differs from the above 62 & 63 Vict. scale practically only with reference to the amount of the fees under c. 14, s. 2 heads 8 and 12 in the first part of the scale, and the amount of the fees 15, n. payable under the second part of the scale.

It will be observed that the scale is framed in somewhat misleading language. In the heading it is described as a scale of expenses *to be allowed* to returning officers, and while some of the items describe the sum allowed as not exceeding a specified sum, the language used with reference to other items suggests that the sums to be allowed under those items are absolutely fixed by the scale. The power of the County Council is however merely to fix a scale, which the expenses are not to exceed. And consequently the scale must be read throughout as fixing the maximum allowance only.

There is no provision for the taxation of the payments to be made to the returning officer within the maximum fixed by the scale. And if there is any dispute as to the payment to be made to the returning officer, the amount must apparently be determined in legal proceedings by the returning officer as in an action upon a *quantum meruit*. Under the order of 1898, the returning officer would apparently in the event of a dispute have to proceed against the vestry by way of mandamus; but very probably the order regulating elections of councillors of a metropolitan borough may require the council themselves to pay the sums payable to the returning officer, and thus enable him in case of dispute to bring an ordinary action against the council.

Of course in practice the returning officer is almost always paid in accordance with the scale fixed under sect. 48 (7) of the Local Government Act, 1894, as if that scale absolutely fixed the sums payable to him, instead of merely fixing a maximum that these sums are not to exceed.

**Corruption at Elections : Election Petitions.** Among the enactments which, subject to prescribed adaptations, are applied by sect. 48 of the Local Government Act, 1894, to elections under that Act, and which will consequently apply in like manner to elections of the councillors of a metropolitan borough are Part IV. of the Municipal Corporations Act, 1882, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

The same enactments apply to members of a county council, including the chairman and county aldermen (51 & 52 Vict. c. 41, s. 75, and see *Ex parte Walker* (1889), 22 Q. B. D. 384; 58 L. J. Q. B. 190; 60 L. T. 581; 37 W. R. 293; 53 J. P. 260); and will consequently apply to the mayor and aldermen of a metropolitan borough.

In their application to elections of the councillors of a metropolitan borough, the enactments will of course be subject to adaptations prescribed by the Local Government Board; but it seems likely that such adaptations will be mainly of a formal character.

Part IV. of the Municipal Corporations Act, 1882, so far as it is unrepealed, relates almost exclusively to the manner in which an election may be questioned by petition, and to the procedure in connection with election petitions.

The Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), besides amending the provisions of Part IV. of the Municipal Corporations Act, 1882, as to election petitions, contains most elaborate and stringent provisions intended to guard against corruption at elections. In the first place, the Act imposes penalties for acts of corruption in the ordinary sense of the term, such as bribery and intimidation. Secondly, it forbids various practices in

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connection with elections, which, though not in themselves necessarily other than innocent, afford a convenient cloak for corruption, such as payment of electors other than regular advertising agents for the exhibition of election placards. The consequences of offences against the Act are very complicated, but broadly they are these:—In the first place a person guilty of an offence against the Act is subjected to penalties ranging from fine to a long term of imprisonment, and also to loss of capacity for holding public office or voting at elections. Secondly, a vote tainted by such an offence will, if the election is petitioned against, be struck off as void. Thirdly, where the offence has been committed by a person for whose acts a candidate at the election, upon the peculiar principles of election law, is responsible, the candidate, if the election is petitioned against, will in most cases forfeit his seat if he was successful, and will also in some cases become subject to certain incapacities to hold office. Lastly, if offences of the kind have been very prevalent in connection with an election, the election may be set aside, although the responsibility is not brought home to the candidate, and though it is not shown with certainty that the result of the election was affected by tainted votes.

It will be apparent from what has been said that it is practically essential for any person who proposes to take active steps in promoting his own or any other person's candidature at an election to which the Act of 1884 applies, to familiarize himself with the provisions of the Act which define the various forms of corruption provided against by the Act, and which impose restrictions on the steps that may lawfully be taken in furtherance of a person's candidature. These portions of the Act are dealt with somewhat fully in the ensuing pages. On the other hand it has not been thought necessary, in such a work as the present, to deal in any detail with the consequences entailed by an infringement of the Act, or to discuss at length the law relating to election petitions.

It will be noticed that the Act of 1884 constantly refers to candidates' agents. The doctrine of agency in connection with elections is briefly discussed, *post*, p. 63.

*Corrupt Practices.*—The more serious offences in connection with elections are called "corrupt practices."

By sect. 2 (1) of the Act of 1884, "The expression 'corrupt practice' in this Act means any of the following offences, namely, treating, undue influence, bribery, and personation as defined by the enactments set forth in Part I. of the 3rd schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation."

*Treating.*—The definition of "treating" thus incorporated with the Act is taken from sect. 1 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), and is as follows:—

"Any person who corruptly by himself or by any other person, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.

"And every elector who corruptly accepts or takes any such meat, drink, entertainment, or provision, shall also be guilty of treating."

This section is practically a re-enactment of the corresponding

section of the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. 62 & 63 Vict. c. 102, s. 4), with this important difference, that it makes corrupt c. 14, s. 2 treating by any person whomsoever a corrupt practice, while the 15, n. earlier enactment was confined to treating by a candidate, either directly, or through other persons on his behalf.

The word "corruptly" governs the whole section, and means, as Blackburn J. said in the *North Norfolk Petition* (*Colman v. Walpole*) (1869), 1 O'M. & H. 236, at p. 242; 21 L. T. 264, merely "with the object and intention of doing that thing which the statute intended to forbid." See also *Beawdley Petition* (*Sturge v. Glass*) (1869), 1 O'M. & H. 16, at p. 19; 19 L. T. 676; *Wallingford Petition* (*Dilke v. Fickers*) (1869), 1 O'M. & H. 57; 19 L. T. 766; *Staleybridge Petition* (*Ogden v. Sidebottom*) (1869), 1 O'M. & H. 66, at p. 73; s. c. 20 L. T. 75; *Tamworth Petition* (*Hill v. Peel*) (1869), 1 O'M. & H. 75, at p. 82; s. c. 20 L. T. 181; *Louth Petition* (*Kirk v. Callan*) (1880), 3 O'M. & H. 161; *St. George's Petition* (*Benn v. Marks*) (1896) 5 O'M. & H. 89, at pp. 98, 100.

With regard to the nature of the offence, Cave, J. said in the *Norwich Petition* (*Birkbeck v. Bullard*) (1886), 4 O'M. & H. 84, at p. 91; s. c. 54 L. T. 625: "In my judgment the statute does not apply to that form of treating which exists occasionally between social equals, where first the one treats and then the other treats, and which is only one form of ordinary hospitality. Neither does it apply to certain kinds of treating which exist in relation to business matters; it is not at all uncommon for persons when they have struck a bargain to cement it with a little drink, and it is obvious that the treating referred to in sect. 1 of the Act has no reference to treating of that sort. It applies in my judgment to that sort of treating which exists where the superior treats his inferior, the treating which gives the treator influence over the person treated, and secures to the former the good will of the latter; not, however, to all cases of this kind does the corrupt treating spoken of in the Act apply. It does not apply where the treating is in return for small services, as where a man may treat a railway guard or porter, or he may treat his own servants; nor does it apply where the object is to acquire general good will. It must have reference to some election, and it must be for the purpose of influencing the vote of the person treated. What the object is in each particular case must depend upon the circumstances of the case."

The following are some of the most recent cases in which questions as to treating have arisen: In the *Aylesbury Petition* (*Cbarsley v. Rothschild*) (1886) 4 O'M. & H. 59, a sitting member, who had just announced himself as a candidate for the ensuing election, gave an entertainment called a school treat, which was attended by over 7000 persons, and at which wine, tea, and cake were provided in tents, tickets for admission to which were distributed without reference to political considerations. It appeared that it had been the custom for some years previously to hold similar school treats. On the occasion in question, the number of persons present was considerably greater than it had been before, but that circumstance was accounted for in various ways. It was held that there was no "corrupt" intention on the part of the candidate, and that he had therefore not been guilty of treating.

In the *Hexham Petition* (*Hudspeth v. Clayton*) (1892), 4 O'M. & H. 143, the treasurer of a political association who expended sums in defraying expenses of picnics given by local political associations, was held to have been guilty of treating.

In the *Rochester Petition* (*Barry v. Davies*) (1892), 4 O'M. & H.

62 & 63 Vict. c. 14, s. 2 (5), n. 156, it was held to amount to treating, where refreshments were supplied at a *conversazione* under circumstances that the Court thought showed an intention to influence the election.

In the *Southampton Petition* (*Austin v. Chamberlayne*) (1895), 5 O'M. & H. 17, it was proved that on the polling day what was called a procession, consisting of a number of costermongers' carts, accompanied the candidate's carriage through some of the principal streets of the town for about two hours, and that a good deal of drinking went on among the persons forming part of the procession. It was held that it was not to be inferred that there had been treating; though, Bruce, J., said: "there may be circumstances in which drinking may raise a presumption that there must have been treating."

In the *Lancaster Petition* (*Bradshaw v. Foster*) (1896), 5 O'M. & H. 39, at p. 42, it was proved that smoking concerts had from time to time been given by the Conservative Association, at which the candidate's election agent and other persons had presided, and that at such entertainments the chairman had ordered drinks all round for the persons attending the concert. It was held that this was not treating.

In the *Haggerston Petition* (*Cremer v. Lowles*) (1896) 5 O'M. & H. 68, at p. 72, a candidate, on the occasion of his birthday, on which occasion there was evidence that he was accustomed to give charity, there being exceptional distress in the constituency, caused a large number of his visiting cards, counterstamped by the manager of a place of refreshment, to be distributed in the constituency, arranging that each of the cards should be accepted by the manager as entitling the person presenting it to food to the extent of 6d. While this was being done a person, who was held to be the candidate's agent, wrote a letter to a newspaper calling attention to the fact that "the Unionist candidate," naming him, had arranged for the distribution of these tickets. The judges differed as to whether any offence had been committed. Wright, J., being of opinion that the agent's letter was written with a corrupt intention, and therefore that the candidate had been guilty by his agent of a corrupt practice; but whether that corrupt practice was bribery or treating he did not decide. Bruce, J., however, held that there was no corrupt intention either on the part of the candidate or his agent, and therefore that no offence had been committed.

*Undue influence*.—The definition of "undue influence," incorporated with the Act of 1884, is contained in sect. 2 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), and is as follows:—

"Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence."

This definition is a re-enactment in but slightly altered language of the earlier definition contained in the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102, s. 5); the words "temporal or



spiritual" are new, but do not seem to effect any material alteration in the law. 62 & 63 Vict.  
c. 14, s. 2

The definition includes influence exercised by landlords over their tenants by threats of eviction (see *North Norfolk Petition* (Colman v. Walpole) (1869), 1 O'M. & H. 236, per Blackburn, J., at p. 241; 21 L. T. 264; *Windsor Petition* (Herbert v. Gardiner) (1874), 2 O'M. & H. 88; 31 L. T. 133), by employers over persons employed by them by threats of dismissal (see *Westbury Petition* (Laverton v. Phipps) (1869), 1 O'M. & H. 47; 20 L. T. 16; *Blackburn Petition* (Potter v. Hornby) (1869), 1 O'M. & H. 198; 20 L. T. 823), or by customers over persons with whom they deal by threats to take away custom (per Blackburn, J., in the *North Norfolk Petition* *ubi sup.* Cf. *Northallerton Petition* (Johns v. Hutton) (1869), 1 O'M. & H. 167; 21 L. T. 113, where it was held that a threat to give up a pew at a Nonconformist chapel was undue influence); also the influence that priests or ministers of religion may exercise by working on the spiritual hopes and fears of voters (see *Galway Petition* (McGovern v. St. Lawrence) (1869), 1 O'M. & H. 303; *Longford Petition* (Broderick v. Greville Nugent) (1870), 2 O'M. & H. 6; *Tipperary Petition* (Mackay v. Heron) (1870), 2 O'M. & H. 31; *Galway Petition* (Trench v. Nolan) (1872), 2 O'M. & H. 46; *South Meath Petition* (Dalton v. Fullam) (1892), 4 O'M. & H. 130; *North Meath Petition* (Mahony v. Davitt) (1892), 4 O'M. & H. 185).

In the *Gloucester Petition* (Guise v. Wait) (1873), 2 O'M. & H. 59; and again in the *Stepney Petition* (Isaacson v. Durant) (1886), 4 O'M. & H. 34 at p. 55, the question arose whether the issue of cards similar to ballot papers, marked with a cross opposite the one candidate's name, and bearing a statement, that if any voter marked his paper otherwise, the vote would be lost, amounted to a "fraudulent device" within the meaning of the enactments defining undue influence; but in both cases it was held that there was no intention on the part of the person issuing the cards to mislead voters, and that what was done was therefore not an attempt to exercise undue influence.

In the *Down Petition* (Macartney v. Castlereagh) (1880), 3 O'M. & H. 115, at p. 122, an Irish case, one candidate published a statement to the effect that the secrecy of the Ballot Act could be infringed with impunity, and that he could ascertain how voters had voted; and the judges differed as to whether this was a "fraudulent device."

*Bribery.*—The definitions of "bribery" incorporated with the Act of 1884 are taken from sects. 2 and 3 of the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), and sect. 49 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102, s. 49). Sects. 2 & 3 of the Act of 1854, as set out in the schedule to the Act of 1884, are as follows:—

Sect. 2. "The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:—

"(1.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

"(2.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree

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to give or procure, or offer, promise, or promise to procure or endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election.

“(3.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

“(4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

“(5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for<sup>1</sup> on account of any legal expenses *bona fide* incurred at or concerning any election.”

Sect. 3. “The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:—

“(1.) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or from<sup>2</sup> refraining or agreeing to refrain from voting at any election.

“(2.) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.”

Sect. 49 of the Act of 1867 as set out in the schedule to the Act of 1884 is as follows:—

“Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at the<sup>3</sup> future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery,

(1) The word “or” occurs here in the Queen’s Printers’ copies of the Act of 1854.

(2) “For” in the Queen’s Printers’ copies of the Act of 1854.

(3) “Any” in the Queen’s Printers’ copies of the Act of 1867.

and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly." 62 & 63 Vict. c. 14, s. 2 (5), n.

With regard to these definitions the following points may be noticed.

It is no answer to a charge of bribery that the person whose vote it was attempted to influence was not entitled to vote, if he was on the register, and had, therefore, a *primâ facie* right to vote. See *Guildford Petition (Elkins v. Onslow)* (1869), 1 O'M. & H. 13; 19 L. T. 729; *Lichfield Petition (Anson v. Dyott)* (1869), 1 O'M. & H. 22, at p. 28; 20 L. T. 11.

The proviso to sect. 2 (5) of the Act of 1854 is somewhat ill-expressed; it "refers no doubt to the various legal expenses incurred at elections, such as printing, messengers, hire of committee rooms . . . and expenses of that nature." Per Watson, B., in *Cooper v. Slade* (1858), 6 H. L. C. 746, at p. 764; 27 L. J. Q. B. 449; 4 Jur. (N.S.) 791; 6 W. R. 461. See also per Bramwell, B., in that case, 6 H. L. C. at p. 765, and the *Coventry Petition (Berry v. Eaton)* (1869), 1 O'M. & H. 97, at p. 101; 20 L. T. 405.

Apparently the mere offer on the part of a voter to sell his vote is not bribery. See *Malloz Petition (Knox v. Munster)* (1870), 2 O'M. & H. 18, at p. 21.

It is to be observed that sect. 49 of the Representation of the People Act, 1867, does not render it illegal to pay a person's rate in order to enable him to be put on the register, unless the payment is made corruptly in order to influence his vote. See *Cbeltenham Petition (Gardner v. Samuelson)* (1869), 1 O'M. & H. 62; 19 L. T. 816; *Oldham Petition (Cobbett v. Hibbert)* (1869), 1 O'M. & H. 151; at p. 164; 20 L. T. 302.

Questions naturally arise very frequently, especially before election courts, as to whether a particular transaction ostensibly innocent does not really amount to bribery. The more important decisions on such questions, which are of course largely questions of fact, are very briefly summarised below.

Gifts made under colour of charity have been held to be bribes (see *Boston Petition (Malcolm v. Ingram)* (1874), 2 O'M. & H. 161; and see the sequel to that case, *Malcolm v. Parry & Ingram*, L. R. 9 C. P. 610; 43 L. J. C. P. 331; 31 L. T. 331; see also *Haggerston Petition (Cremer v. Lowles)*, ante, p. 48); while *bonâ fide* charity or munificence, or lavish expenditure in the constituency, even though stimulated by the hope of securing popularity in view of a forthcoming election, has been held not to amount to bribery. See *Windsor Petition (Richardson-Gardner v. Eykyn)* (1869), 1 O'M. & H. 1, at p. 2; 19 L. T. 613; *Westbury Petition (Laverton v. Phipps)* (1869), 1 O'M. & H. 47, at p. 49; *Hastings Petition (Galtborpe v. Brassey)* (1869), 1 O'M. & H. 217; 21 L. T. 234; *Stafford Petition (Chazner v. Meller)* (1869), 1 O'M. & H. 228; 21 L. T. 210; *Belfast Petition (McTier v. McClure)* (1869), 1 O'M. & H. 281; 21 L. T. 475; *Windsor Petition (Herbert v. Gardner)* (1874), 2 O'M. & H. 88; 31 L. T. 133; *Plymouth Petition (Latimer v. Bates)* (1880), 3 O'M. & H. 107; *Salisbury Petition (Moore v. Kennard)* (1883), 4 O'M. & H. 21, at p. 28; *Lichfield Petition (Wolseley v. Fulford)* (1895), 5 O'M. & H. 27; *St. George's Petition (Benn v. Marks)* (1896), 5 O'M. & H. 89, at pp. 91, 96; and see *Haggerston Petition (Cremer v. Lowles)*, ante, p. 48.

Formerly candidates commonly employed large numbers of persons as messengers, etc., in connection with elections, and questions frequently

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arose as to whether such persons were employed *bonâ fide*, or merely colourably, their wages being really bribes and not payment for services rendered. See *Tamworth Petition* (*Hill v. Peel*) (1869), 1 O'M. & H. 75; 20 L. T. 181; *Penryn Petition* (*Broad v. Fowler*) (1869), 1 O'M. & H. 127; *Durham Petition* (*James v. Thompson*) (1874), 2 O'M. & H. 134; 31 L. T. 227; *Boston Petition* (*Tunnard v. Ingram*) (1880), 3 O'M. & H. 151; 44 L. T. 287; *Oxford Petition* (*Green v. Hall*) (1880), 3 O'M. & H. 155; *Salisbury Petition* (*Moore v. Kennard*) (1883), 4 O'M. & H. 21. Such questions are unlikely to arise in future, as rigid conditions are now imposed on the employment of paid workers in connection with elections by the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51, s. 17), as regards parliamentary elections, and by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70, s. 13, as to which see *post*, p. 56) as regards municipal and other local elections.

It has been held to be bribery, where the circumstances show an intention to influence votes, for an employer to give his workmen a holiday on polling day without docking their wages (see *Gravesend Petition* (*Truscott v. Bevan*) (1880), 3 O'M. & H. 81; 44 L. T. 64). But in the *Stroud Petition* (*Baynes v. Stanton*) (1874), 2 O'M. & H. 181, where a holiday on full wages was given under circumstances that the Court thought negatived a corrupt intention, it was held that the employer had not been guilty of bribery. Employers are now by the Parliamentary Elections Corrupt Practices Act, 1885 (48 & 49 Vict. c. 56), enabled, subject to certain conditions, to permit their workmen to absent themselves for the purpose of polling at parliamentary elections without loss of wages; but that Act does not extend to municipal elections. As to the payment of wages since the passing of that Act, in the case of a parliamentary election, see *Aylesbury Petition* (*Charsley v. Rothschild*) (1886), 4 O'M. & H. 59.

The payment of a voter's travelling expenses to or from the poll is bribery, if the payment is conditional upon his voting, but not otherwise. See *Cooper v. Slade* (1858), 6 H. L. C. 746; 27 L. J. Q. B. 449; 4 Jur. (N.S.) 791; 6 W. R. 461; *Lichfield Petition* (*Anson v. Dyott*) (1869), 1 O'M. & H. 22, at p. 28; 20 L. T. 11; *Coventry Petition* (*Berry v. Eaton*) (1869), 1 O'M. & H. 97, at pp. 105, 109; 20 L. T. 405; *Northallerton Petition* (*Johns v. Hutton*) (1869), 1 O'M. & H. 167; *Dublin Petition* (*Woodlock v. Guinness*) (1869), 1 O'M. & H. 270; *Bolton Petition* (*Ormerod v. Cross*) (1874), 2 O'M. & H. 138; 31 L. T. 194; *Horsbam Petition* (*Aldridge v. Hurst*) (1876), 3 O'M. & H. 52; *Harwich Petition* (*Tomline v. Tyler*) (1880), 3 O'M. & H. 61, at p. 64; s. c. 44 L. T. 187.

The payment of such expenses is now in any case illegal both at parliamentary elections under the Corrupt and Illegal Practices Act, 1883 (46 & 47 Vict. c. 51, s. 7, and see ss. 13, 14), and at municipal elections under provisions that will be mentioned later.

In the *Coventry Petition* (*Berry v. Eaton*) (1869), 1 O'M. & H. 97; 20 L. T. 405, where A. undertook, if B. would stand jointly with him for a constituency, to defray B.'s expenses, but it did not appear that A.'s offer was really an attempt to purchase B.'s influence, the Court held that the arrangement was legal; for there is nothing *per se* illegal in contributing towards a candidate's expenses. See also *Belfast Petition* (*M'Tier v. McClure*) (1869), 1 O'M. & H. 281; 21 L. T. 475.

In *Britt v. Robinson* (*Bristol Petition*) (1870), L. R. 5 C. P. 503; 23 L. T. 188; s. c. *nom. Brett v. Robinson*, 39 L. J. C. P. 265; 18

W. R. 866, it was held that bribery at a test ballot held to determine 62 & 63 Vict. who, among three candidates belonging to the same party, should c. 14, s. 2 ultimately contest an election, was bribery with reference to the (5), n. ultimate election.

The following are further instances of forms that bribery has taken:—An offer to remunerate a voter for loss of time in going to vote (*Simpson v. Yeend* (1869), L. R. 4 Q. B. 626; 38 L. J. Q. B. 313; 21 L. T. 56; 17 W. R. 1100; 10 B. & S. 752); payments made under colour of remuneration for loss of time in attending the revising barrister's court (*Taunton Petition* (*Williams v. Cox*) (1869), 1 O'M. & H. 181; 21 L. T. 169), though payments *bonâ fide* made for a like purpose have been held to be legal (*Hastings Petition* (*Calthorpe v. Brassey*) (1869), 1 O'M. & H. 217; 21 L. T. 234); payment of a voter's debt in order to get him out of custody and enable him to vote (*Londonderry Petition* (*McGowan v. Dozue*) (1869), 1 O'M. & H. 274); an offer to vacate a seat on a town council in favour of a voter (*Waterford Petition* (*Condon v. Osborne*) (1870), 2 O'M. & H. 24); permission to shoot rabbits on a candidate's property (*Launceston Petition* (*Drinkwater v. Deakin*) (1874), 2 O'M. & H. 129; 30 L. T. 823); colourable hiring of committee rooms (*Sandwich Petition* (*Goldsmid v. Roberts*) (1880), 3 O'M. & H. 158).

*Personation*.—The definition of personation incorporated with the Act of 1884, is contained in sect. 24 of the Ballot Act, 1872 (35 & 36 Vict. c. 33), and is as follows:—

“A person shall, for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.”

The essence of this offence is the fraudulent intention; it is not personation when a person votes erroneously, honestly believing himself entitled to vote. See *Athlone Petition* (*Sheil v. Ennis*) (1880), 3 O'M. & H. 57; *Stepney Petition* (*Isaacson v. Durant*) (1886), 4 O'M. & H. 34, at p. 43; 54 L. T. 684; *Finsbury Petition* (*Penton v. Naoroji*) (1892), 4 O'M. & H. 171.

*Return of expenses*.—In the case of an election of councillors of a municipal borough, candidates are required to make returns of their election expenses under sect. 21 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and a candidate who makes a false return is guilty of a corrupt practice; that offence must therefore be added to the list of corrupt practices as regards such elections. But the provisions as to these returns do not apply to elections under the Local Government Act, 1894, and will consequently not apply to an election of councillors of a metropolitan borough.

*Minor offences*.—The offences against Municipal Elections (Corrupt and Illegal Practices) Act, 1884, hitherto dealt with, all involve an element of corruption in the ordinary sense. The provisions of the Act now to be quoted and discussed are of a different character, being intended to strike at practices which have been found a convenient cloak for corruption, apart from any question as to the moral culpability of the practice in any particular case.

By sect. 4 of the Act of 1884 “(1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made—

“(a.) on account of the conveyance of electors to or from the poll

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whether for the hiring of horses or carriages, or for railway fares, or otherwise; or

“(b.) to an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice; or

“(c.) on account of any committee room in excess of the number allowed by this Act (that is to say), if the election is for a borough one committee room for the borough, and if the election is for a ward one committee room for the ward, and if the number of electors in such borough or ward exceeds two thousand, one additional committee room for every two thousand electors and incomplete part of two thousand electors, over and above the said two thousand.

“(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after a municipal election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

“(3.) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.”

Although the provisions of the Act of 1884, which prohibit the payment of any sum, and the incurring of expense by or on behalf of a candidate, on account of, or in respect of the conduct or management of the election, do not apply to the elections mentioned in sect. 37 of that Act, and consequently do not apply to elections under the Local Government Act, 1894 (see sect. 48 (3, b) of that Act), nor to elections of councillors of a metropolitan borough, it seems that the above section is applicable to such elections.

Further provisions as to the conveyance of electors to and from the poll are made by sect. 10 of the Act of 1884 (see *post*, p. 55).

In the *Lichfield Petition* (*Wolseley v. Fulford*) (1895), 5 O.M. & H. 27, at p. 30, payment for stabling and baiting horses sent over night for the purpose of driving voters to the poll was held to be a payment on account of the conveyance of voters to the poll within the provisions of the Act of 1883 (46 & 47 Vict. c. 51, s. 7), corresponding to the above section, and therefore to be illegal.

In the *Southampton Petition* (*Austin v. Chamberlayne*) (1895), 5 O.M. & H. 17, at p. 20, the agent of two joint candidates at an election paid a voter's railway fare, amounting to two shillings, on the occasion of his going to poll. The offence was held to be, under the circumstances, “trivial and unimportant”: and one of the candidates was excused from the consequences (under 46 & 47 Vict. c. 51, s. 22 (b.)), but the election of the other was set aside inasmuch as in the opinion of the Court “all reasonable means for preventing the commission of corrupt and illegal practices” had not been taken by him and on his behalf.

By a clause in the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51, s. 64), incorporated with the Act of 1884 (47 & 48 Vict. c. 70, s. 34), “‘Committee room’ shall not include any house or room occupied by a candidate at an election as a

dwelling, by reason only of the candidate there transacting business 62 & 63 Vict. with his agents in relation to such election: nor shall any room or c. 14, s. 2 building be deemed to be a committee room for the purposes of this (5), n. Act by reason only of the candidate or any agent of the candidate addressing therein electors, committee-men, or others."

With regard to the use of committee rooms in licensed premises, &c., see *post*, p. 58.

With regard to the exceptions referred to in sub-sect. (2), of the above section, see *post*, p. 58.

By sect. 5 of the Act of 1884 a limitation is placed on the total expenditure that may be incurred by or on behalf of a candidate for the office of councillor. But this provision will not apply to councillors of a metropolitan borough: see sect. 37 of the Act of 1884, applied to elections under the Local Government Act, 1894, and consequently to elections of the councillors of a metropolitan borough, by sect. 48 (3*b*) of the last-mentioned Act. Sect. 5 further absolutely prohibits the incurring of any expense whatever by or on behalf of a candidate for any corporate office other than that of councillor: and this provision applies to candidates for the office of chairman or alderman of a county council (see 51 & 52 Vict. c. 41, s. 75), and will consequently apply to candidates for the office of mayor or alderman of a metropolitan borough.

By sect. 6, of the Act of 1884, "(1.) If any person votes or induces or procures any person to vote at a municipal election, knowing that he or such person is prohibited, whether by this or any other Act, from voting at such election, he shall be guilty of an illegal practice.

"(2.) Any person who before or during a municipal election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

"(3.) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed without his knowledge and consent."

By sect. 9 of the Act of 1884, "Where a person knowingly provides money for any payment which is contrary to the provisions of this Act [*for for any expenses incurred in excess of any maximum amount allowed by this Act, or for replacing any money expended in any such payment, except where the same may have been previously allowed in pursuance of this Act to be an exception*], such person shall be guilty of illegal payment."

The words in italics, which refer to sect. 5 of the Act, will of course not apply in the case of the election of a councillor of a metropolitan borough.

By sect. 10 of the Act of 1884, "(1.) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or from the poll at a municipal election, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of illegal hiring.

"(2.) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of illegal hiring.

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"(3.) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of conveying him or them to or from the poll.

"(4.) No person shall be liable to pay any duty or to take out a licence for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election."

Further provisions as to the conveyance of electors to or from the poll, contained in sect. 4 of the Act of 1884, have already been quoted.

By sect. 11 of the Act of 1884, "Any person who corruptly induces or procures any other person to withdraw from being a candidate at a municipal election, in consideration of any payment or promise of payment, shall be guilty of illegal payment, and any person withdrawing in pursuance of such inducement or procurement shall also be guilty of illegal payment."

By sect. 12 of the Act of 1884, "(1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction.

"(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment if he knew that the same was made contrary to law."

In the *Stepney Petition* (*Rushmere v. Isaacson*) (1892), 4 O'M. & H. 178, broad strips of canvas bearing the words "Isaacson for Stepney," and stretched across the streets, were held to be banners.

In the *St. George's Petition* (*Benn v. Marks*) (1896), 5 O'M & H. 89, at p. 107, portraits of a candidate printed on linen furnished with laths at the top and bottom, which were carried about by boys and others, were held to be banners; and the Court expressed the opinion that the portraits, even if they had been used merely by affixing them to walls, would have been marks of distinction.

Hat cards made expressly to be worn in the hat have been held to be marks of distinction (see *Walsall Petition* (*Hately v. James*) (1892), 4 O'M. & H. 123); but the opposite view has been taken as to cards not made for that purpose, though in fact to some extent worn as hat cards; see *East Clare Petition* (*Cox v. Redmond*) (1892), 4 O'M & H. 162; and see *Pontefract Petition* (*Shaw v. Reckitt*) (1893), 4 O'M. & H. 200.

By sect. 13 of the Act of 1884, "(1.) No person shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except as follows (that is to say),

"(a.) a number of persons may be employed, not exceeding two for a borough or ward, and if the number of electors in such borough or ward exceeds two thousand one additional person may be employed for every thousand electors and incomplete part of a thousand electors over and above the said two thousand, and such persons may be employed as clerks and messengers, or in either capacity; and



“(b.) one polling agent may be employed in each polling station: 62 & 63 Vict.

“Provided that this section shall not apply to any engagement or c. 14, s. 2 employment for carrying into effect a contract *bonâ fide* made with any (5), n. person in the ordinary course of business.

“(2.) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed in contravention of this Act.

“(3.) A person legally employed for payment under this section may or may not be an elector, but may not vote.”

The Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51, s. 64), provides that “the expression ‘payment’ includes any pecuniary or other reward; and the expressions ‘pecuniary reward’ and ‘money’ shall be deemed to include any office, place, or employment, and any valuable security or other equivalent for money, and any valuable consideration, and expressions referring to money shall be construed accordingly.” This provision is incorporated with the Act of 1884 (47 & 48 Vict. c. 70, s. 34), and under it, it was held in the *Barrow-in-Furness Petition* (*Schneider v. Duncan*) (1886), 4 O’M. & H. 76; 54 L. T. 618, that persons employed in connection with an election who were given refreshments, but no money, were employed for “payment.”

In the *Elgin and Nairn Petition* (*Hood v. Gordon*) (1895), 5 O’M. & H. 1, at p. 13, it appeared that one M. had been appointed a polling agent, and had been paid seventeen guineas for his services; and it appeared that he had urged voters to vote. It was held that under the circumstances he had been employed really as a polling agent, and not as a sub-agent within the meaning of sect. 17 of the Corrupt and Illegal Practices Prevention Act, 1883, as was contended by the petitioner. So in the *Lichfield Petition* (*Wolseley v. Fulford*) (1895), 5 O’M. & H. 27, at p. 28, it was held that although certain paid clerks had canvassed, there was not sufficient evidence to show that they had been employed to canvass.

In the last-mentioned case, 5 O’M. & H., at p. 29, where a man acted as a candidate’s sub-agent at an election and then voted, whereupon the agent refused to pay his fee, it was held that he was not employed “for payment or promise of payment” within the provision of the Act of 1883 (46 & 47 Vict. c. 51, s. 17), corresponding to the above section, and Pollock, B., said, “I think that where the word ‘promise’ of payment is used in sect. 17 of the Act of 1883, it means an actual express promise, and not that the promise may be inferred by the conduct of the parties, which would entitle a man to recover in a civil action.”

The number of polling agents that may be employed at the various elections under the Local Government Act, 1894, is prescribed by the Orders of the Local Government Board made under that Act, and the provisions of the above section as to polling agents are modified accordingly for the purpose of the application of the Act to such elections. Similar provisions may not improbably be made with reference to elections of councillors of a metropolitan borough.

By sect. 14 of the Act of 1884, “Every bill, placard, or poster having reference to a municipal election shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or

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posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate, be guilty of an illegal practice, and if he is not the candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds."

In *Bettesworth v. Allingham* (1885), 16 Q. B. D. 44; 34 W. R. 296; 50 J. P. 55, B. was a candidate at an election; and it was proved that A. had received from his own servant at his residence a printed address and letter having reference to the election, and purporting to be signed by B., without the printer's name and address; that the document was printed for publication under instructions conveyed to the printer by B.'s brother, who resided with him; and that the printer had debited B. with the cost of printing the bill, but had not been paid; it was held that there was no evidence that B. had caused the document to be printed.

By sect. 15 of the Act of 1884, "The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense, in excess of a certain maximum, shall not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act."

By sect 16 of the Act of 1884, "(1.) (a.) Any premises, which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises, or

"(b.) Any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of such premises,

"shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he knew it was intended to use the same, in contravention of this section, shall also be guilty of illegal hiring.

"(2.) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid."

*Excuses and Exemptions.*—By sect. 19 of the Act of 1884, "Where, upon the trial of an election petition respecting a municipal election, the election court reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences, in reference to such election, and the election court further report that the candidate has proved to the court—

"(a.) That no corrupt or illegal practice was committed at such election by the candidate or with his knowledge or consent, and the offences mentioned in the said report were committed without the sanction or connivance of such candidate; and

"(b.) That all reasonable means for preventing the commission of corrupt and illegal practices at such election were taken by and on behalf of the candidate; and

"(c.) That the offences mentioned in the said report were of a 62 & 63 Vict.  
trivial, unimportant, and limited character; and c. 14, s. 2

"(d.) That in all other respects the election was free from any (5), n.  
corrupt or illegal practice on the part of such candidate and  
of his agents;

"then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act."

It should be observed that the Court has no power to relieve a candidate against any corrupt practice committed by his agent, except treating and undue influence. If, therefore, a candidate's agent has been guilty of even the most trivial act of bribery, the Court is bound to avoid the election.

For instances in which election courts have refused to exonerate candidates under the corresponding section of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51, s. 22), on the ground that all reasonable means for preventing the commission of corrupt and illegal practices has not been taken, see *Rochester Petition (Barry v. Davies)* (1892), 4 O'M. & H. 156; *Southampton Petition (Austin v. Chamberlayne)*, ante, p. 54.

By sect. 20 of the Act of 1884, "Where, on application made, it is shown to the High Court or to a municipal election court by such evidence as seems to the court sufficient—

"(a.) that any act or omission of a candidate at a municipal election for a borough or ward of a borough, or of any agent or other person, would, by reason of being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring; and

"(b.) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and

"(c.) that such notice of the application has been given in the said borough as to the court seems fit;

and under the circumstances it seems to the court to be just that the said candidate, agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission."

Notice of an intended application for relief under this section should be given to the opposing candidate or candidates and to the returning officer, and should be given to the constituency by means of placards posted in the district and advertisements in the local papers; but no notice need be given to the Attorney-General. See *Ex parte Leighton* (1889), 53 J. P. 263; *Ex parte Perry* (1884), 48 J. P. 824; *Cf. re South Salop election* (1886), 54 L. T. 129.

In *Ex parte Wilks* (1885), 16 Q. B. D. 114; 55 L. J. Q. B. 576; 50 J. P. 487, where an application was made under the above section by a successful candidate and it appeared that a petition had been presented against him and was pending, the Court ordered the application to stand over until the trial of the petition.

An application for relief may be made before the election is held. See *Ex parte Kyd* (1897), 14 Times L. R. 64.

The applicant for relief may be required to pay the costs of persons

62 & 63 Vict. c. 14, s. 2 (5), n. opposing the granting of the relief, though the relief is granted. See *Ex parte Kyd* (1897), 14 *Times* L. R. 154.

An appeal lies to the Court of Appeal from the decision of the Queen's Bench Division on an application under this section. See *Ex parte Walker* (1889), 22 Q. B. D. 384; 58 L. J. Q. B. 190; 60 L. T. 581; 37 W. R. 293; 53 J. P. 260.

For instances of applications under the present section, see, in addition to the cases already cited, *Ex parte Clark* (1885), 52 L. T. 260; *Ex parte Darlington* (1889), 53 J. P. 71; *Ex parte Thomas* (1889), 60 L. T. 728; *Ex parte Haseldine* (1895), 59 J. P. 71.

Reference may also be made to *Ex parte Robson* (1886), 18 Q. B. D. 336; 55 L. T. 813; 35 W. R. 290; 51 J. P. 199; *Stepney Petition* (*Isaacson v. Durant*) (1886), 4 O'M. & H. 34, at p. 53; *Buckrose Petition* (*Sykes v. McArthur*) (1885), 4 O'M. & H. 110; *Walsall Petition* (*Hately v. James*) (1892), 4 O'M. & H. 123; *Stepney Petition* (*Rushmere v. Isaacson*) (1892), 4 O'M. & H. 178; and the cases cited in connection with sect. 19.

*Election Petitions.*—The ordinary, and in general, if not universally, the only way of questioning, in a court of law, the validity of an election to which Part IV. of the Municipal Corporation Act, 1882, and the amending Act of 1884 are applicable, is by an election petition, though in the case of elections under the Local Government Act, 1894, including elections of the councillors of a metropolitan borough, there is sometimes an alternative procedure by way of application to the county council (see *Reg. v. Miles*, and the observations on that case, *post* p. 62).

By sect. 87 of the Municipal Corporations Act, 1882:—

“(1.) A municipal election may be questioned by an election petition on the ground—

- (a.) That the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation; or
  - (b.) That the election was avoided by corrupt practices or offences against this Part committed at the election; or
  - (c.) That the person whose election is questioned was at the time of the election disqualified; or
  - (d.) That he was not duly elected by a majority of lawful votes.
- (2.) A municipal election shall not be questioned on any of those grounds except by an election petition.”

Clause (a) of this section refers to sect. 81 of the Act of 1882, by which “a municipal election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of parliament avoid a parliamentary election.”

The principle of the common law under which an election may be set aside for general corruption has been considered in numerous parliamentary cases. It will suffice here to quote with reference to it the following observations of Blackburn J. in the *Stafford Petition* (*Chawner v. Mellor*) (1869) 1 O'M. & H. 228, at p. 234; 21 L. T. 210:—“There is a principle . . . that if there has been general corruption, although it does not appear to have been done by any agent,—I mean either general corruption, preventing the election representing what it ought to represent, that is, the feeling of the constituents; or general intimidation, so that you may say it is evident the election is not a free one,—in that case, although it is not brought home to the agent, the election would not be good by the common law of parliament. It must, however, be very difficult in such a case to

prove, and very difficult to be able to say whether or not a case is of sufficient magnitude to amount to that." 62 & 63 Vict.  
c. 14, s. 2

The enactments under which an election is avoided by corrupt practices or offences against election law are now contained in the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, by which Act the corresponding provisions in Part IV. of the Act of 1882 which are alluded to in clause (b) of the above section are replaced.

By sect. 3 of the Act of 1884—" (1.) Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the report of an election court made in pursuance of section ninety-three of the Municipal Corporations Act, 1882, that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office in the said borough, and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice.

" (2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by his agents of any corrupt practice in reference to such election, and if the report is that any candidate at such election has been guilty by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office in the said borough, during a period of three years from the date of the report, and if he has been elected, his election shall be void."

By sect. 8 of the same Act—" (1.) An illegal practice within the meaning of this Act shall be deemed to be an offence against Part Four of the Municipal Corporations Act, 1882, and a petition alleging such illegal practice may be presented and tried accordingly.

" (2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any illegal practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by himself or his agents of an illegal practice in reference to such election, and if the report is that a candidate at such election has been guilty by himself or his agents of an illegal practice in reference to such election, the candidate shall not be capable of being elected to or of holding any corporate office in the said borough during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected, his election shall be void; and, if the report is that such candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice."

And by sect. 18 of the same Act—" Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the election court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of

62 & 63 Vict. c. 14, s. 2 (5), n. a candidate at that election, have so extensively prevailed that they may be reasonably supposed to have affected the result of that election, the election court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void, and he shall not, during the period for which he was elected to serve, or for which, if elected, he might have served, be capable of being elected to or holding any corporate office in the said borough."

The interpretation put by the Court upon the section of the Corrupt Practices (Municipal Elections) Act, 1872 (35 & 36 Vict. c. 60, s. 12), of which sect. 87 of the Act of 1882 is a re-enactment in slightly changed language, and upon the last mentioned section, as regards the cases in which municipal election may be questioned by petition, has been very wide; and it is accordingly only in very exceptional cases that a petition does not form the proper and only means of questioning a municipal election. Thus in *Hovues v. Turner* (1876), 1 C. P. D. 670; 45 L. J. C. P. 550; 35 L. T. 58, it was held under the earlier enactment that an election might be questioned by petition on the ground that the notice of election was misleading, and had led to a candidate's nomination paper being delivered too late. Again, in *Reg. v. Morton* [1892], 1 Q. B. 39; 61 L. J. Q. B. 39; 65 L. T. 611; 40 W. R. 109; 56 J. P. 105, where the mayor of a borough was a candidate, and, acting as returning officer, gave a casting vote for himself, and declared himself elected, it was held under section 87 of the Act of 1882 that the election could not be questioned except by petition. See also *Reg. v. Welchpool Corporation* (1876), 35 L. T. 594; *Budge v. Andrews* (1878), 3 C. P. D. 510; 47 L. J. C. P. 586; 39 L. T. 166; *Brown v. Benn* (1889), 53 J. P. 167; *Pritchard v. Bangor Corporation* (1888), 13 App. Cas. 241; 57 L. J. Q. B. 313; 58 L. T. 502; 37 W. R. 103; 52 J. P. 564.

In *Reg. v. Miles* (1895), 64 L. J. Q. B. 420; 72 L. T. 502; 59 J. P. 407; *S. C. nom. Reg. v. Mills*, 43 W. R. 445; at an election of parish councillors held apparently under the Parish Councillors Election Order, 1894, C. and S. were elected at the parish meeting, but a poll was demanded by a person who was not entitled to demand a poll. The poll was held, and L. and W. were returned at the head of the poll and they accepted office. It was held that sect. 87 of the Act of 1882 prevented the election from being questioned by proceedings for a mandamus, even if there was no other answer to such proceedings. The Court, however, expressed the opinion that an election petition was not the only remedy in such a case, but that there was an alternative remedy by application to the county council under sect. 48 (5) or 80 (1) of the Local Government Act 1894, which contain provisions enabling the county council to remove difficulties in connection with elections under that Act. The latter sub-section is now spent. It is temporarily replaced as regards most elections by the Local Government (Elections) Act, 1896 (59 & 60 Vict. c. 1); but that Act does not extend to elections of metropolitan vestrymen, and will consequently not apply to elections of councillors of a metropolitan borough.

A petition may be presented against some only of a number of successful candidates upon grounds that equally affect the election of all such candidates, and upon such a petition the candidates petitioned against may be unseated. *Line v. Warren* (1885), 14 Q. B. D. 548; 54 L. J. Q. B. 291; 53 L. T. 446; 49 J. P. 516.

Where a petitioning candidate is seated on petition, a fresh petition cannot be brought for the purpose of unseating him. (*Waygood v.*

*James (Taunton Petition)* (1869), L. R. 4 C. P. 361; 38 L. J. C. P. 62 & 63 Vict. 195; 21 L. T. 202; *s. c. nom. Heygood v. James*, 17 W. R. 824.) c. 14, s. 2. Under sect. 93 (10) of the Act of 1882, however, provision is made for (5), *u.* the hearing of countercharges against a candidate for whom the seat is claimed, at the trial of the original petition.

An election petition may be presented either by four or more persons who voted or had a right to vote at the election, or by a person alleging himself to have been a candidate at the election (45 & 46 Vict. c. 50, s. 88). As to the presentation of a petition by a person in fact nominated as a candidate though disqualified, see *Harford v. Linskey* [1899] 1 Q. B. 852; 68 L. J. Q. B. 599; 80 L. T. 417; 63 J. P. 263.

In general it must be presented within twenty-one days after the day on which the election was held. But there are provisions extending this time in particular cases (*ib.*, s. 88; 47 & 48 Vict. c. 70, s. 25).

The procedure in relation to election petitions is beyond the scope of this work; it is regulated partly by Part IV. of the Municipal Corporations Act, 1882, and the amending Act of 1884, and partly by Rules made under Part IV. of the Act of 1882.

**Agency.**—Allusion has already been made more than once to the peculiar doctrine of agency in connection with elections; and the candidate's "agents" are referred to in several of the enactments with respect to malpractices at municipal elections and municipal election petitions that have been quoted. Some observations on the doctrine may be useful.

The doctrine has been developed almost entirely in connection with parliamentary elections; but it is expressly extended to municipal elections by sect. 100 (3) of the Municipal Corporations Act, 1882.

Judges sitting as election courts for the trial of parliamentary election petitions have from the first, following the practice of election committees, set aside elections not only for malpractices on the part of the successful candidate personally but also for malpractices on the part of his agents; and in dealing with questions as to the responsibility thus cast upon a candidate for the acts of his agents, they have, in this respect also following the former practice of election committees, very largely extended the ordinary principles of agency.

In the first place, circumstances are sufficient to establish the relation of principal and agent between a candidate and persons engaged in furthering his candidature that would, with respect to ordinary transactions, be wholly insufficient to establish agency. Questions as to whether the fact of agency is or is not established by the evidence continually arise at the trial of election petitions. It is not possible to deal fully with the reported decisions on such questions within the limits of the present work, more especially as such questions are as much questions of fact as of law, so that the effect of the decisions cannot be accurately expressed with any degree of conciseness. "It has never yet been distinctly and precisely defined what degree of evidence is required to establish such a relation between the sitting member and the person guilty of corruption, as should constitute agency. . . . No one yet has been able to go further than to say, as to some cases, enough has been established: as to other, enough has not been established to vacate the seat." Per Blackburn, J., in the *Bridgewater Petition* (*Westropp v. Kinglake*) (1869), 1 O'M. & H. 112, at p. 115. Perhaps the following remarks of Grove, J., in the *Taunton Petition* (*Marshall v. James*) (1874), 2 O'M. & H. 66, at p. 74; 30 L. T. 125 are as accurate a general statement of the principles by which election courts are guided

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on questions as to the fact of agency as could be given:—"To establish agency for which the candidate would be responsible, he must be proved by himself or by his authorized agent to have employed the persons whose conduct is impugned to act on his behalf, or to have to some extent put himself in their hands, or to have made common cause with them for the purpose of promoting his election." The learned judge, however, was careful to explain that these remarks were not to be taken as an exhaustive definition of agency.

Again, once the fact of agency is established, the candidate is responsible, generally speaking, for all the acts of the agent, including acts that the candidate may not have authorized or may even have expressly forbidden. This doctrine was established in the *Norwich Petition* (*Tillett v. Stracey*) (1869), 1 O'M. & H. 8; 19 L. T. 615, and has been acted upon in numerous cases since: see e.g. the *Taunton Petition* (*Williams v. Cox*) (1869), 1 O'M. & H. 181; 21 L. T. 169, where the doctrine is very clearly laid down by Blackburn, J. A person may, however, have a limited authority as agent, as, for instance, to canvass particular voters, and in that case the candidate is not responsible for acts of the agent entirely beyond the limits of his authority. See *Bodmin Petition* (*Adams v. Gower*) (1869), 1 O'M. & H. 117, at p. 119; 20 L. T. 989; *Harwich Petition* (*Tomline v. Tyler*) (1880), per Lush, J., 3 O'M. & H. 61, at p. 69; 44 L. T. 187; *Westbury Petition* (*Laverion v. Phipps*) (1880), 3 O'M. & H. 78.

Again, the maxim *delegatus non potest delegare* does not apply to electioneering agents, and the candidate is accordingly responsible not only for the acts of his immediate agents, but also for the acts of sub-agents acting under the authority of an immediate agent. See, e.g., *Beadley Petition* (*Sturge v. Glass*) (1869), 1 O'M. & H. 16; 19 L. T. 676; *Barnstaple Petition* (*Fleming v. Cave*) (1874), 2 O'M. & H. 105; *Plymouth Petition* (*Latimer v. Bates*) (1880), 3 O'M. & H. 107.

Political associations and their officers have frequently been held to be electioneering agents. With reference to this subject the following observations of Pollock, B., in the *St. George's Petition* (*Benn v. Marks*) (1895), 5 O'M. & H. 89, at p. 97, may be quoted:—"In determining the question how far a candidate, by attending the meetings of a political association makes it or any of its officers his agents, it is necessary first to inquire what is the object and character of the association. If, for instance, its object be simply to secure the election to Parliament of a particular individual, it would be difficult, if not impossible, for a candidate to take part in its operations without becoming responsible for its acts during an election. Again, if the object of an association be to procure the election of some candidate professing the political views of one of the two great parties which are supposed to divide the opinions entertained by the whole electorate of the country, a candidate, if during an election he attended its meetings and availed himself of the assistance of the association, would probably be held so to sanction the association acting on his behalf as to constitute the officers of the association his agents. Where, however, the object of the association is merely to advocate the views and interests of a particular portion of the community, as where a temperance society forms local branches to uphold the closing of public houses or local option, and a brewers' or a publicans' association forms branches to support the opposite views, or where Irish Home Rule is advocated by one society and Unionist views by another, the position is different, and a candidate who is invited by a branch association within his division to attend their meeting, to hear their views and to explain his own, does not by so attending necessarily associate



himself with their organisation so as to make any of their officers his 62 & 63 Vict agents." c. 14, s. 2

*Prima facie* the agency comes to an end as soon as the election is (5, n.) over, so that the candidate is not responsible for acts of persons, who were his agents while the election was pending, done after the election, unless there is evidence to connect the candidate with the act in question. See *Salford Petition (Anderson v. Caswley)* (1869), 1 O'M. & H. 133; 20 L. T. 120; *North Norfolk Petition (Colman v. Walpole)* (1869), 1 O'M. & H. 236, at p. 243; 21 L. T. 264.

It should be observed that the liability of the candidate to prosecution for offences against election law committed by other persons is not regulated by the peculiar principles as to electioneering agency above referred to, but is, by the ordinary principles of the criminal law, confined to offences committed by his authority or with his consent. See *per* Martin, B. in the *Norwich Petition (Tillett v. Stracey)* (1869), 1 O'M. & H. 8; 19 L. T. 615; Rogers on Elections, Part II., 16th edition, p. 317.

**Proceedings.**—The council of a metropolitan borough will have power to make bye-laws as to their proceedings. There are, however, some statutory provisions as to the proceedings of an administrative vestry which will apply to such councils and which it will be convenient to mention before discussing the powers under which the bye-laws in question may be made.

*Convention of Meetings.*—With regard to the convention of meetings of an elective vestry in London, sect. 9 of the Metropolis Management Amendment Act, 1856 (19 & 20 Vict. c. 112) provides as follows:—"Every meeting of any vestry constituted by" the Metropolis Management Act, 1855, "of which and of the special purpose whereof notice is now by law required to be affixed on or near the principal doors of the churches and chapels within the parish, may be convened by transmitting through the post or otherwise notice, signed by the clerk to the vestry, to each vestryman, at his usual or last known place of abode in England, of the place and hour of holding the same, and the special purposes thereof, three days before the day appointed for such meeting, and also by affixing at the same time notice thereof on or near the door of any building where the said meeting is to be holden, and it shall not be necessary that notice of any such meeting shall be further or otherwise signed or published."

This enactment evidently has reference to the provisions of the Vestries Act, 1818 (58 Geo. III., c. 69, s. 1), and the Parish Notices Act, 1837 (7 Will. IV., & 1 Vict. c. 45, s. 2), as to the convention of vestry meetings. The former of these Acts, which it is to be observed does not define "vestry," provides that "no vestry or meeting of the inhabitants in vestry of or for any parish shall be holden until public notice shall have been given of such vestry, and of the place and hour of holding the same, and the special purpose thereof, three days at the least before the day to be appointed for holding such vestry." The notice was, under the Act of 1818, to be published in church on Sunday during or after divine service, and also affixed in writing on the principal door of such church. The Act of 1837 abolished the publication of the notice in church, and substituted therefor the affixing of the notice on or near to the doors of *all* the churches and chapels within the parish.

Sect. 9 of the Act of 1856 seems to assume that these provisions were applicable to some extent, at all events, to the elective vestries constituted under the Metropolis Management Act, 1855. It is,

62 & 63 Vict.  
c. 14, s. 2  
(5), n.

however, by no means clear how far this was the case, and it is consequently by no means clear how far the provisions of sect. 9 of the Act of 1855 are generally applicable to the convention of a metropolitan vestry. The section will apparently apply to the council of a metropolitan borough to the same extent that it applies to a metropolitan vestry.

Unless otherwise provided by the bye-laws, no fresh notice will be requisite where a meeting of the council is adjourned, though of course if no fresh notice is given, only such business as could have been transacted at the original meeting, can be transacted at the adjourned meeting. See *Scadding v. Lorant* (1851), 3 H. L. C. 418; 15 Jur. 955; *Kerr v. Wilkie* (1860), 6 Jur. (N.S.) 383; 1 L. T. 501; 8 W. R. 286.

For instances where neglect to give the proper notice for a meeting of a public body has been held to invalidate the acts of the body done at the meeting, see *Dobson v. Fussey* (1831), 7 Bing. 305; 5 Moo. & P. 112; *Smyth v. Darley* (1849), 2 H. L. C. 789.

*Time for holding Meetings.*—By sect. 37 of the Metropolis Management Amendment Act, 1862, which will apply to the council of a metropolitan borough, any elective vestry “may hold their meetings on such days of the week, except Sundays, as they may from time to time determine, notwithstanding any provision to the contrary contained in any local Act; and any business which, by any local or other Act of Parliament, or custom, should be done by any such vestry on a certain day, may be done at any meeting of such vestry duly convened for the purpose, and held within seven days next before or after such certain day as aforesaid: provided that where the hour or time for holding such meetings is fixed by the local Act they shall continue to be held at the same hour or time.”

*Chairmanship at Meetings of Council.*—It is obviously intended that the mayor of a metropolitan borough shall be entitled to the chair at a meeting of the council. And no doubt the first part of rule 9 of the 2nd schedule of the Municipal Corporations Act, 1882, which provides that in the case of a municipal borough “at every meeting of the council, the mayor, if present, shall be chairman,” must be regarded as being applied to the mayor of a metropolitan borough by sub-sect. (4) of the present section.

Sect. 2 (6) of the Local Government Act, 1888, empowers a county council to appoint a vice-chairman to hold office during the term of office of the chairman, and, broadly speaking, to act in his stead when necessary. It is submitted, however, that this provision is not a provision of the Act with respect to the chairman of a county council within the meaning of sub-sect. (4) of the present section, and that it will consequently not apply to the council of a metropolitan borough. If not, there is no general statutory provision for the appointment of a vice-chairman or deputy chairman by such a council.

In some cases, however, the Local Government Board have made orders under sect. 33 of the Local Government Act, 1894 (as to this section, see the note to sect. 16, *post*), conferring or purporting to confer on an elective vestry in London the power of a parish council to appoint a vice-chairman. And, if the Local Government Board have power to make such an order, which the writer ventures to think very doubtful, the Board will have a similar power in the case of the council of a metropolitan borough, or, under sect. 16 of the present Act, the like power of appointing a vice-chairman might be conferred on such a council by a scheme under the present Act.

The power of a parish council to appoint a vice-chairman is given 62 & 63 Vict. by rule 11 of Part II. of the 1st schedule to the Local Government Act, c. 14, s. 2 1894, which provides that "The parish council may, if they think fit, (5), n. appoint one of their number to be vice-chairman, and the vice-chairman shall, in the absence or during the inability of the chairman, have the powers and authority of the chairman."

By sect. 30 of the Metropolis Management Act, 1855, "at every meeting of any vestry under this Act, in the absence of the persons authorized by law [*or custom*]<sup>1</sup> to take the chair, the members present shall elect a chairman for the occasion before proceeding to other business." And it is submitted that, subject to the possibility that the council will have power to appoint a vice-chairman, this provision will apply in the case of a metropolitan borough council when the mayor is absent, and also when, although not absent, he is disentitled to preside with reference to a particular question: see *Reg. v. White* (1867) L. R. 2 Q. B. 557; 36 L. J. Q. B. 267.

*Determination of Questions.*—By a provision in sect. 28 of the Metropolis Management Act, 1855, which will apply, *mutatis mutandis*, to the council of a metropolitan borough, all questions "shall be decided by the votes of the majority of the vestrymen present."

In most cases the enactments regulating the proceedings of local authorities provide for the determination of questions by a majority of those present and voting on the question (see *e.g.* rule 7 of the 1st part of schedule I. to the Public Health Act, 1875, which applies to non-municipal district councils and boards of guardians). But in the case of a metropolitan council a majority of all the members of the council present, whether they vote or not, will be required under the above quoted provisions of sect. 28 of the Act of 1855. See *Re Eynsham Inhabitants* (1849), 12 Q. B. 398 n.; 18 L. J. Q. B. 210; 13 Jur. 345; *Reg. v. Griffiths* (1851), 17 Q. B. 164; *Reg. v. Christchurch Overseers* (1857), 7 E. & B. 409; 26 L. J. M. C. 68; 5 W. R. 755.

By sect. 30 of the Metropolis Management Act, 1855, "the chairman, in case of an equality of votes on any question, shall have a second or casting vote."

This provision must, it is submitted, be read as giving the chairman a second or casting vote whenever the number of those voting in favour of a resolution is equal to the number of those voting against it, and abstaining from voting, taken together. If it is literally interpreted it is inconsistent with the provisions of sect. 28 above quoted.

The ordinary method of voting at a meeting of a public body is by show of hands or some equivalent method. See *Faulkner v. Elger* (1825), 4 B. & C. 449; 6 D. & R. 517; and see also *Re Horbury Bridge Coal, &c. Co.* (1879), 11 Ch. D. 109; 48 L. J. Ch. 341; 40 L. T. 353; 27 W. R. 433, considered in *Re Chillington Iron Co.* (1885), 29 Ch. D. 159; 54 L. J. Ch. 624; 52 L. T. 504; 33 W. R. 442, and in *Ernest v. Loma Gold Mines Co.* [1897] 1 Ch. 1; 66 L. J. Ch. 17; 75 L. T. 317; 45 W. R. 86.

But, though the point is not free from doubt, it seems that if at a meeting of the council a vote were, with the consent of the meeting, taken by some form of secret ballot, the decision of the meeting would not necessarily be invalid or liable to be set aside. See *Shaze v. Thompson* (1876), 3 Ch. D. 233; 45 L. J. Ch. 827; 34 L. T. 721; but see *Edenborough v. Archbishop of Canterbury* (1826), 2 Russ. 93; *Faulkner v. Elger*, *supra*; *Story v. Colk* (1848), 6 No. Ca. Ecc. & M.

(1) These words are repealed by the Local Government Act, 1894.

62 & 63 Vict. Cts., supplement, xxxiii.: *Reg. v. Hammersmith, (Vicar of)* (1852),  
 c. 14, s. 2 3 B. & S. 504 n.  
 (5), n.

*Rescission of previous Resolution.*—By sect. 57 of the Metropolis Management Act, 1855, which will apply to the council of a metropolitan borough, “no resolution or other act . . . of any . . . vestry, shall be revoked or altered at any subsequent meeting, unless such subsequent meeting be specially convened for the purpose, nor unless such revocation or alteration be determined upon by a majority consisting of two-thirds . . . of the vestrymen present at such subsequent meeting, if the number of . . . vestrymen present at such subsequent meeting be not greater by one-fifth than the number present when such resolution was made or such act was done, but if the number of . . . vestrymen present at such subsequent meeting be greater by one-fifth than the number present at such former meeting, then such revocation or alteration may be determined upon by a mere majority.”

In *Sooby v. St. Mary Abbots, Kensington, Vestry* (1871), 35 J. P. 343, it was held that a resolution altering the name of a street which had been determined by a previous resolution was a resolution revoking or altering the previous resolution within this section.

In *St. George the Martyr, Southwark, Vestry v. Pethebridge* (1867), 31 J. P. 279, it was apparently held that a resolution to cause a new street to be paved at the cost of the frontagers under sect. 105 of the Metropolis Management Act, 1855, was not a revocation or alteration of a previous resolution to undertake its repair under sect. 106 of that Act. The judgments, however, are very short, and the case was only argued on one side.

In *Ex parte Richards* (1878), 3 Q. B. D. 368; 47 L. J. Q. B. 498; 38 L. T. 684; 26 W. R. 695; s. c. nom. *Reg. v. Jones*, 42 J. P. 614, the opinion was expressed that a resolution dismissing an officer was not an alteration or revocation of the resolution by which he was appointed within the meaning of a bye-law of scope similar to that of the section in question.

It is submitted that the section will not apply to the rescission or alteration by the council of a metropolitan borough of a resolution or act of their predecessors.

*Minutes and Accounts.*—By sect. 60 of the Metropolis Management Act, 1855, “Entries of all proceedings . . . of any . . . vestry, with the names of the members who attend each meeting, shall be made in books to be provided and kept for that purpose, under the direction of the . . . vestry, and shall be signed by the members present, or any two of them, and all entries purporting to be so signed shall be received as evidence, without proof of any meeting of the . . . vestry having been duly convened or held, or of the presence at any such meeting of the persons named in such entry as being present thereat, or of such persons being members of the . . . vestry, or of the signature of any person by whom any such entry purports to be signed, all which matters shall be presumed until the contrary be proved; and every such . . . vestry shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid by them or under their authority, and of all liabilities incurred by them, and of the several purposes for which such sums of money are received and paid and such liabilities incurred, and copies of all contracts entered into by any such . . . vestry.”

By sect. 61 of the same Act, all such books are, at all reasonable times, to be open to the examination of every member of the vestry, and “of every owner of property, churchwarden, overseer, and ratepayer” within the parish, “and of every creditor on the rates raised

under this Act by any such . . . vestry . . . without fee or reward, 62 & 63 Vict. and they respectively may take copies of or extracts from such books c. 14. s. 2 or any part thereof, without paying for the same." By the same 154 n. section a penalty is imposed for a refusal on the part of a member or officer of the vestry, having the custody of any such books, for refusing to permit the inspection or copying of the books in accordance with the section.

With regard to the accounts of the council of a metropolitan borough, and the inspection thereof, see sect. 14 of the present Act, and the note thereto.

**Bye-Laws as to Proceedings.**—The council of a metropolitan borough will have power to make bye-laws regulating their proceedings under sect. 202 of the Metropolis Management Act, 1855, which provides that "Every district board and vestry respectively may, from time to time, make, alter, and repeal bye-laws for all or any of the purposes following; (that is to say,) for regulating the business and proceedings at their meetings, and of committees appointed by them." The section, which empowers such bodies to make bye-laws also for other purposes, further provides that penalties may be imposed by the bye-laws, and contains a proviso, "that no bye-laws shall be repugnant to the laws of England, or to the provisions of this Act; and that no bye-law shall be of any force or effect unless and until the same be submitted to and confirmed at a subsequent meeting of the board or vestry: provided also, that no penalty shall be imposed by any such bye-law unless the same be approved by one of Her Majesty's principal Secretaries of State."

By sect. 203, "All bye-laws made and confirmed as aforesaid in pursuance of this Act, shall be printed and hung up in the principal office of the board or vestry, and be open to public inspection without payment, and copies thereof shall be delivered to any person applying for the same on payment of such sum, not exceeding twopence, as the board or vestry shall direct; and such bye-laws, when so published, shall be sufficient to justify all parties acting under the same: and the production of a printed copy of such bye-laws, authenticated by the seal of such board or vestry, shall be evidence of the existence and of the due making, confirmation and publication of such bye-laws, in all prosecutions under the same, without adducing proof of such seal or of the fact of such confirmation or publication of such bye-laws."

(6.) The quorum of the borough council shall be one-third of the whole number of the council.

(7.) The mayor and an alderman of a metropolitan borough shall be required to accept office within the same period as is allowed in the case of a councillor.

**Note.—Acceptance of Office.**—As to acceptance of office by the mayor and aldermen, see the note to sub-sect. (4) *ante*, p. 14.

(8.) The Local Government Board may, on request made by a borough council in pursuance of a resolution of the council passed by a majority of two-thirds of the members present and voting at a meeting of the council duly convened for the purpose, provided that such majority

62 & 63 Vict. c. 14, s. 2 (8). is not less than the majority of the whole council, make an order directing that the whole of the councillors shall retire together on the ordinary day of election in every third year, and may on like request rescind any such order.

**Note.—Triennial Election.**—Apart from any order of the Local Government Board under this sub-section, the councillors of a metropolitan borough will retire annually by thirds, the term of office of each councillor being three years. See sect. 9 of the Metropolis Management Act, 1855, which is made applicable to such councillors by sub-sect. (5).

The necessary provisions to establish the rotation will be made under sect. 27.

Of course an order of the Local Government Board under the present section must contain incidental provisions lengthening or shortening the term of office of certain councillors; and it must be taken that the Board have power to make such incidental provisions.

Date for  
elections of  
councillors.

**Sect. 3.—(1.)** The first elections of all borough councillors under this Act shall be held on the first day of November one thousand nine hundred, or on such later day, as soon as practicable thereafter, as may be fixed by the Lord President of the Council, who shall also fix a corresponding date for the first elections of mayor and aldermen.

(2.) The ordinary day of election of borough councillors shall be the first day of November, or if that day is Sunday, then the following day.

(3.) The ordinary day of election of the mayor and aldermen shall be the ninth day of November, or if that day is Sunday, then the following day.

**Note.—Day of Election.**—Provisions that will apply in the event of failure to hold an election of a mayor or of aldermen at the proper time, have been mentioned, *ante*, p. 11. There are no corresponding general provisions with reference to failure to hold an election of councillors at the proper time, though in some cases sect. 48 (5) of the Local Government Act, 1894, *ante*, p. 37, might apply.

(4) The revised list of voters in each borough shall in each year after the year one thousand nine hundred be printed and signed before the twentieth day of October, and come into operation as the register for the purpose of borough elections on the first day of November.

**Note.—Lists of Voters.**—Special provisions under which the lists of voters are to be brought into operation for the purposes of elections of councillors under this Act on November 1st in the year 1900, are contained in sect. 27 (3).

*Powers of Borough Councils.*

62 & 63 Vict.  
c. 44, s. 4 (1).

Transfer to  
borough  
councils of  
powers from  
vestries and  
district  
boards.

**Sect. 4.**—(1) On the appointed day every elective vestry and district board in the county of London shall cease to exist, and, subject to the provisions of this Act and of any scheme made thereunder, their powers and duties, including those under any local Act, shall, as from the appointed day, be transferred to the council for the borough comprising the area within which those powers are exercised, and their property and liabilities shall be transferred to that council, and that council shall be their successors, and the clerk of the council shall be called the town clerk, and shall be the town clerk within the meaning of the Acts relating to the registration of electors.

Provided that in the case of borrowing powers so transferred, if the London County Council refuse their sanction, or do not within six months after application made give their sanction, to a loan, or attach conditions to their sanction, an appeal shall lie to the Local Government Board, whose decision shall be final.

**Note.—Transfer of Powers, etc., of Elective Vestries and District Boards.**—As to the “appointed day,” see sect. 33.

“Elective vestry” is defined by sect. 34 as meaning any vestry elected under the Metropolis Management Act, 1855. It will be remembered that elective vestries are of two kinds: “administrative vestries,” that is elective vestries of parishes that are not grouped into districts under district boards, and the elective vestries of the parishes that are so grouped.

“Local Act” is defined by sect. 34; and that section also incorporates definitions of “powers,” “duties,” “property,” and “liabilities,” which are given in the note to that section.

As to the going out of office of the existing members of elective vestries and district boards, see sect. 27 (4).

By sect. 23 (1) the powers and duties of vestries relating to the affairs of the church, and any interest of a vestry in any church property, are excepted from the transfer under this section, and special provision is made with regard to such powers and duties and interests.

It is of course impossible within the limits of such a work as the present to give even a summary of the powers and duties of elective vestries and district boards in London. All that can be done is to give a list of the more important Acts under which they have such powers and duties, and to add one or two observations of a miscellaneous character which it appears to the writer may possibly be useful.

Apart from the Metropolis Management Acts, as to which a word or two will be said later, the more important Acts under which

62 & 63 Vict. administrative vestries and district boards have powers are the following:—  
c. 14, s. 4  
(1), n.

*The Alkali, etc., Works Regulation Acts, 1881 and 1892* (44 & 45 Vict. c. 37; 55 & 56 Vict. c. 30). The administrative vestries and district boards are "sanitary authorities" within these Acts (44 & 45 Vict. c. 37, s. 27), and as such have power to complain to the Local Government Board of a breach of their provisions. The purposes of the Acts appear from their titles.

*The Barbed Wire Act, 1893* (56 & 57 Vict. c. 32). Under this Act the administrative vestries and district boards have power to take proceedings to secure the removal of barbed wire fences from the vicinity of highways.

*The Canal Boats Acts, 1877 and 1884* (40 & 41 Vict. c. 60; 47 & 48 Vict. c. 75). The administrative vestries and district boards are in general "sanitary authorities," and also in certain cases "registration authorities" for the purposes of these Acts (40 & 41 Vict. c. 60, ss. 7, 14). The Acts may be said, broadly speaking, to be concerned with the regulation for sanitary purposes of canal boats used as dwellings. The sanitary and registration authorities have various powers for enforcing the provisions of the Acts and of the regulations made under them by the Local Government Board.

*The Electric Lighting Acts, 1882 and 1888* (45 & 46 Vict. c. 56; 51 & 52 Vict. c. 12). The administrative vestries and district boards are local authorities under these Acts (45 & 46 Vict. c. 56, s. 31, and sched.). As such they may themselves obtain a licence or provisional order authorizing them to supply electricity, and they have also extensive powers with reference to the supply of electricity under the Acts within their parishes and districts by private persons and companies.

*The Factory and Workshop Acts, 1878 to 1895* (41 & 42 Vict. c. 16; 46 & 47 Vict. c. 53; 54 & 55 Vict. c. 75; 58 & 59 Vict. c. 37). The administrative vestries and district boards are "sanitary authorities" within the meaning of these Acts (41 & 42 Vict. c. 16, s. 96, and see 54 & 55 Vict. c. 76, s. 99); and as such have certain powers as to the enforcement of the Acts, chiefly as regards the sanitary condition of factories and workshops.

*The Highway Act, 1835* (5 & 6 Will. IV. c. 50). By sect. 96 of the Metropolis Management Act, 1855, every administrative vestry and district board are, within their parish or district, to "execute the office of and be surveyor of highways," and to have the powers and duties of a surveyor of highways under the law for the time being in force, so far as the same are consistent with the Act. These bodies have accordingly most of the powers of a surveyor of highways under the Highway Act, 1835, except rating powers. The Acts amending the Act of 1835 apply to a very limited extent in London.

*The Housing of the Working Classes Act, 1890* (53 & 54 Vict. c. 70). The administrative vestries and district boards are local authorities for the purposes of Part II. of this Act (*ib.*, s. 92, and Sched. I.), which is concerned with the closing and demolition of houses unfit for human habitation and consequential matters.

*The London Building Act, 1894* (57 & 58 Vict. c. ccciii.). The administrative vestries and district boards are "local authorities" within the meaning of this Act (*ib.*, s. 5 (42)). The powers of the local authorities under the Act are, however, very limited.

*The London Overhead Wires Act, 1891* (54 & 55 Vict. c. lxxvii.). The administrative vestries and district boards are local authorities under this Act (*ib.*, s. 1), and have power to enforce the bye-laws



made under the Act as to overhead wires, and to take proceedings for the removal or securing of dangerous overhead wires. (62 & 63 Vict. c. 14, s. 4.)

*The Metropolis Management (Thames River Prevention of Floods) Amendment Act, 1879* (42 & 43 Vict. c. cxcviii.). The administrative vestries and district boards have certain powers and duties under this Act in relation to works for the protection of premises from inundations caused by the overflow of the Thames. The Act is amended by sects. 46-48 of the Metropolitan Board of Works (Various Powers) Act, 1882 (45 & 46 Vict. c. lvi.).

*The Metropolitan Open Spaces Acts, 1877 and 1881* (40 & 41 Vict. c. 35; 44 & 45 Vict. c. 34.). The administrative vestries and district boards are local authorities for the purposes of these Acts as amended and extended by the Open Spaces Acts, 1887 and 1890 (50 & 51 Vict. c. 32; 53 & 54 Vict. c. 15; see sect. 2 of the last-mentioned Act). Under these Acts open spaces may be conveyed to local authorities, and such authorities have certain powers with regard to the management of such open spaces.

*The Public Health (London) Act 1891* (54 & 55 Vict. c. 76). The administrative vestries and district boards are "sanitary authorities" for the purposes of this Act (*ib.*, s. 99), and as such have powers and duties of great variety and importance. The Act deals with the suppression of nuisances, the regulation of offensive trades, smoke consumption, the sanitary condition of workshops and bakehouses, the control of dairies, the removal of refuse, sanitary conveniences, drains etc., unsound food, the supply of water, the notification and prevention of infectious diseases, the prevention of epidemic diseases, mortuaries, the regulation in certain respects of lodging-houses, the use of tents and vans as dwellings, the use of underground rooms as dwellings, and various cognate matters.

*The Sale of Food and Drugs Act, 1875; the Sale of Food and Drugs Act Amendment Act, 1879, and the Margarine Act, 1887* (38 & 39 Vict. c. 63; 42 & 43 Vict. c. 30; 50 & 51 Vict. c. 29). The administrative vestries and district boards have power to appoint public analysts under these Acts (38 & 39 Vict. c. 63, s. 10); and they have also power through certain officers to enforce the Acts by causing samples of articles of food and drugs to be taken and analysed, and proceedings to be instituted against persons offending against the Acts. The first two Acts are directed against the adulteration of food and drugs. The third Act deals specially with the sale of margarine. The Acts are amended by an Act of 1899, which was not printed when these pages went to press.

*The Sale of Horseflesh, etc., Regulation Act, 1889* (52 & 53 Vict. c. 11). The administrative vestries and district boards have powers by their officers to administer this Act, which is directed against the sale of horseflesh otherwise than under the name of horseflesh.

*The Tramways Act, 1870* (33 & 34 Vict. c. 78). The administrative vestries and district boards are "road authorities" under this Act (*ib.*, s. 3 and Sched. A), and have various powers as such. They have also various powers of more or less similar character under the numerous local Acts and Provisional Orders under which the various tram lines in London have been laid and are worked.

*Gas and Water Acts.* The administrative vestries and district boards have powers as local authorities under the Metropolis Gas Act, 1860 (23 & 24 Vict. c. 125), which is a general Act extending to the supply of gas in London, though certain of the gas companies supplying gas in London are exempted from its provisions; and they have also powers under the various special Acts of the various gas

62 & 63 Vict. c. 14, s. 4 (1), n. companies supplying gas in London, and under the general Acts incorporated with the Act of 1860 or with such special Acts. The chief powers of the administrative vestries and district boards under these Acts relate to the breaking up of streets for the purpose of laying gas pipes, the supply of gas for lighting the streets, and the appointment of gas examiners to test the quality of gas.

The administrative vestries and district boards are local authorities under the Metropolis Water Act, 1897 (60 & 61 Vict. c. 56), and have powers accordingly which are mentioned in the note to sect. 6 (6) *post*. They do not appear to have powers under the earlier general Acts relating to water supply in London. But they have powers under the various special Acts of the metropolitan water companies and the general Acts incorporated therewith.

*The Metropolis Management Acts.* Under these Acts (18 & 19 Vict. c. 120; 19 & 20 Vict. c. 112; 21 & 22 Vict. c. 104; 25 & 26 Vict. c. 102; 41 & 42 Vict. c. 32; 48 & 49 Vict. c. 33; 50 & 51 Vict. c. 17; 53 & 54 Vict. cc. 54, 66; 56 & 57 Vict. c. 55; 62 & 63 Vict. c. 15), by the first of which they were brought into existence, the administrative vestries and district boards have powers and duties as to sewers and drains, as to highways and streets, and as to various miscellaneous matters.

They have also under these Acts various powers that may be regarded as ancillary to their substantive powers. Of these the most important are, of course, their powers of raising money. Other powers of this character are powers to appoint officers and powers to enter into contracts. Many of the ancillary powers are expressed in the Acts to be given for the purposes of those Acts. But, of course, where further powers and duties have been conferred on the administrative vestries and district boards by other Acts, the provisions of the Metropolis Management Acts relating to such ancillary powers have very often been extended either expressly or by implication so as to apply with reference to such further powers and duties. It is, however, very frequently a doubtful question whether particular provisions of those Acts have been so extended. For example, it is far from clear whether the provisions of sect. 149 of the Metropolis Management Act, 1855, apply to a contract entered into by an administrative vestry for the purposes of the Electric Lighting Acts. And numberless doubtful questions of similar character might be suggested.

*Powers of Elective Vestries generally.* The elective vestries, whether administrative vestries or not, are for all or almost all purposes vestries within the general law relating to vestries. And they possess accordingly such common law powers and duties as attach to vestries generally, and also the general statutory powers of vestries, so far as such statutory powers extend to London; see sect. 8 of the Metropolis Management Act, 1855, and sects. 1-3 of the Metropolis Management Amendment Act, 1856, quoted in the note to sect. 23 (1) *post*.

The powers that the elective vestries thus possess are, however, not numerous, nor for the most part important.

Perhaps the most important—apart from powers relating to the affairs of the church, to which the borough councils will not succeed (see sect. 23 of the present Act)—are certain powers under the Highway Acts; the important powers as to the rating of owners instead of occupiers enjoyed by vestries under the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41); and certain powers under the “adoptive Acts” discussed in the note to the next sub-section.

*Local Acts.* As to the powers of administrative vestries and district boards under local Acts, it may be mentioned that by

sect. 90 of the Metropolis Management Act, 1855, the functions of almost all the then-existing parochial authorities under local Acts were transferred to the administrative vestries and district boards. c. 14, s. 4 (1), n.

The section provided with reference to parishes placed under administrative vestries that all the duties, powers, and authorities for or in relation to the paving, lighting, watering, cleansing, or improving of any such parish, or any part of such parish, at the time of the Act vested in any commissioners, or in any body other than the vestry of the parish, or in any officer of any commissioners or other body, and all other duties, powers, and authorities, in anywise relating to the regulation, government, or concerns of any such parish or part, or of the inhabitants thereof, with certain exceptions, vested under any local Act in any commissioners, or in any body other than the vestry of such parish, or in any such officer, should be transferred to the administrative vestry.

As regards parishes placed under district boards, the section provided, in precisely similar terms, and subject to precisely similar exceptions, for the transfer of functions under Local Acts to the district boards, except that the transfer extended to the powers not only of commissioners and bodies other than the vestries, but also to powers of vestries.

The powers under local Acts of vestries of parishes placed under administrative vestries attached to the administrative vestries by virtue of sect. 8 of the Act.

The powers, &c., excepted from the transfer effected by sect. 90 were "such duties, powers, and authorities, as relate to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor." As regards these excepted powers and duties, however, further provisions were made by sects. 1-3 of the Metropolis Management Amendment Act, 1856, as to which see the note to sect. 23 (1), *post*.

Sect. 91 of the Act of 1855 contains savings as to powers under the Burial Acts, as to markets, and as to charities. And sects. 92-95 contain provisions consequential on the transfer effected by sect. 90. As to the saving with regard to charities, see the note to sect. 23 (5), *post*.

Under sect. 16 of the present Act provision is made for the repeal or amendment of local Acts by schemes under the present Act.

**Town Clerk.**—There is no express enactment under which the council of a borough will be required to appoint a particular person "clerk of the council." But it is clear that the office of town clerk in a metropolitan borough must be held by some one person. On this point, and as to the transfer of existing officers to the borough councils and the appointment of officers by borough councils generally, see sect. 30 and the notes thereto.

Under sect. 11 (1) the town clerk will have the duties of the overseers as well as the duties of a town clerk with reference to the preparation of the lists of voters; and under sect. 27 (2) an Order in Council may adapt the enactments relating to the registration of electors accordingly.

Under sect. 25 the council will have power to appoint a deputy town clerk in case of the illness or absence of the town clerk.

**Borrowing Powers.**—The principal borrowing powers of the council of a metropolitan borough will be under sects. 185-191 of

62 & 63 Vict. the Metropolis Management Act, 1855, which apply to borrowing by  
c. 14, s. 4 administrative vestries and district boards for the purposes of that  
(1), n. Act, and have been extended so as to apply to borrowing by these  
bodies for many other purposes.

Under sect. 183 moneys are not to be borrowed under these sections "without the previous sanction in writing" of the London County Council as the successors of the Metropolitan Board of Works.

It is, of course, to borrowing under these provisions that the proviso to the present sub-section relates.

The council of a metropolitan borough will have some further powers of borrowing. For example, where they act in execution of the Burial Acts they will or may have power to borrow for the purposes of those Acts with the consent of the Treasury.

(2) Where any of the adoptive Acts is adopted within a borough, the borough council shall be the authority for administering the Act; and where any such Act has been adopted before the appointed day, and is administered by commissioners or a board, a scheme under this Act shall abolish the commissioners or board, and transfer their powers, duties, property, and liabilities to the borough council.

**Note.—Adoptive Acts.**—The expression "adoptive Acts" is defined by sect. 34 as meaning the Baths and Washhouses Acts, 1846 to 1896, the Burial Acts, 1852 to 1885, and the Public Libraries Acts, 1892 and 1893.

The three groups of Acts, so far as regards the effect of the present Act upon their provisions, are dealt with in order below. One or two general observations applicable to all the groups of Acts may however be premised.

The expenses incurred by a borough council in the execution of the adoptive Acts will be defrayed under sect. 10 of the present Act and not in accordance with the special provisions in the adoptive Acts themselves.

Provision for the adoption of the Acts after the appointed day is made by sub-sect. (4) of the present section. There seems, however, to be no means whereby, where any of the groups of adoptive Acts is already in force in part of a borough, and that group of Acts is subsequently adopted in the residue of the borough, the two parts of the borough can be completely amalgamated for the purposes of the Acts. And it will apparently be necessary for the council generally speaking to execute the Acts independently in each part of the borough.

It will appear from the ensuing account of the several groups of Acts that the provisions of the present Act with reference to the adoptive Acts are of a very imperfect character, and give rise to many questions of great difficulty. It is however possible that many of these difficulties may be removed by schemes under the present Act; though how far the authorities to whom the power of preparing and settling such schemes is entrusted will regard themselves as justified in inserting clauses to remove such difficulties remains to be seen. As to schemes under the present Act generally, see sect. 16 and the note thereto.

**The Baths and Washhouses Acts, 1846 to 1896.**—

These are the Baths and Washhouses Acts, 1846, 1847, 1878, 1882 and 1896 (9 & 10 Vict. c. 74; 10 & 11 Vict. c. 61. 41 & 42 Vict. c. 14;

45 & 46 Vict. c. 30; 59 & 60 Vict. c. 59). The Acts are amended in 62 & 63 Vict. minor particulars by the Baths and Washhouses Act, 1899 (62 & 63 c. 14, s. 4 (2), n. Vict. c. 29).

Where the Acts have been adopted they enable public baths, public washhouses, open bathing places, and covered swimming baths to be provided and maintained.

Hitherto in London outside the City the vestry of any parish have had power, with the consent of the Local Government Board, and by a two-thirds majority, to adopt the Acts for their parish (9 & 10 Vict. c. 74, ss. 1, 5; 34 & 35 Vict. c. 70, s. 2).

"Parish" and "vestry" are specially defined in the Acts (9 & 10 Vict. c. 74, s. 2; 10 & 11 Vict. c. 61, s. 2); but it would seem that in London outside the City, the expressions may be taken as meaning a parish under an elective vestry, and the elective vestry of that parish.

Until recently the Acts when adopted in a London parish outside the City were in all cases carried out by a board of commissioners elected by the vestry (9 & 10 Vict. c. 74, ss. 6-11, 20) and acting in many respects subject to the control of the vestry.

Latterly, however, the functions of such boards of commissioners have in many cases been transferred to the vestry by an order of the Local Government Board under sect. 33 of the Local Government Act, 1894, as to which section see the note to sect. 16 of the present Act.

When the Acts are on the appointed day already in force for any parish, they will, after the appointed day, be carried out by the council of the borough comprising the parish, either by virtue of the present sub-section, or, where the executive powers under the Acts have already been transferred to an elective vestry, by virtue of sub-sect. (1) of the present section. In either case the controlling powers of the vestry will also attach to the borough council by virtue of sub-sect. (1).

Provision as to the adoption of the Acts after the appointed day is made by sub-sect. (4) of the present section.

Under that sub-section the council of a metropolitan borough will be able to adopt the Acts by simple resolution, for the whole of their borough, if they are not already in force for any part of it, or for the residue of their borough, if the Acts are already in force for part of their borough: see sect. 10 of the Public Health Act, 1875, under which the Acts may be adopted by any urban authority by simple resolution, and under which they may consequently be adopted for a municipal borough by simple resolution of the council.

Expenses under the Acts at present fall on the poor rate (9 & 10 Vict. c. 74, ss. 16-18; 41 Vict. c. 14, s. 13).

**The Burial Acts, 1852 to 1885.**—This collective title includes twelve Acts. The first nine of these (15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; 17 & 18 Vict. c. 87; 18 & 19 Vict. c. 128; 20 & 21 Vict. c. 81; 22 Vict. c. 1; 23 & 24 Vict. c. 64; 25 & 26 Vict. c. 100; 34 & 35 Vict. c. 33), passed respectively in 1852, 1853, 1854, 1855, 1857, 1859, 1860, 1862, and 1871, may each be cited as "the Burial Act" with the addition of the year in which it was passed. The remaining three Acts are: the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), the Burial and Registration (Doubts Removal) Act, 1881 (44 & 45 Vict. c. 2) and the Burial Boards (Contested Elections) Act, 1885 (48 & 49 Vict. c. 21).

The Acts of 1880 and 1881 were passed to authorize burials in consecrated ground without the rites of the established church, and burials with such rites in unconsecrated ground.

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c. 14, s. 4  
(2), n.

The main objects of the remaining Acts are to enable burials in undesirable places to be prohibited, and new burial grounds to be provided and maintained. For the purposes of the present note attention may be confined to the last-mentioned provisions of the Acts.

The first of the Burial Acts, namely the Act of 1852 (15 & 16 Vict. c. 85) was originally confined to the "metropolis" as defined by that Act, and though most of its provisions were extended to the rest of the country by the Burial Act, 1853 (16 & 17 Vict. c. 134), there remain points of difference between the provisions of the Burial Acts applicable within the "metropolis" and those applicable elsewhere.

The "metropolis" for the purposes of the Burial Acts is not coterminous with the area formerly constituting the metropolis for the purposes of the Metropolis Management Acts, and now forming the administrative county of London. Thus the parishes of Eltham, Kidbrooke, Lee, and Lewisham, and the hamlet of Penge, though within the administrative county of London appear to be outside the metropolis for the purposes of the Burial Acts; and on the other hand the parish of Willesden, though not in the administrative county of London, is within the metropolis for the purposes of these Acts. See 15 & 16 Vict. c. 85, s. 53, and Sched. A.

Hitherto in the county of London the first step towards bringing into operation the provisions of the Acts as to the provision and maintenance of burial grounds in any area has been the passing of a resolution by the proper body, usually an elective vestry, that a burial ground be provided for that area.

The execution of the provisions of the Acts in question in the county of London was in all cases until recently in the hands of a burial board, elected by the vestry or other body passing the resolution to provide a burial ground or their successors, and acting in many respects subject to the control of that vestry or body.

Lately, however, the Local Government Board have in many cases transferred the functions of burial boards to elective vestries by orders under sect. 33 of the Local Government Act, 1894, as to which section see the note to sect. 16 of the present Act.

It will be observed that sub-sect. (4) of the present section refers to the "adoption" of the Burial Acts. These Acts, however, do not in terms provide for their being "adopted," nor do they use any equivalent expression with reference to the steps that bring their provisions as to the provision, &c., of a burial ground into active operation; and there is nothing in the present Act either expressly or by reference defining the meaning of the "adoption" of the Burial Acts. The Local Government Act, 1894, however, speaks of the adoption of the Burial Acts, and sect. 7 (8) of that Act provides that for the purposes of that Act "the passing of a resolution to provide a burial ground under the Burial Acts, 1852 to 1885, shall be deemed an adoption of those Acts."

And doubtless the expression "adoption" of the Burial Acts in the present Act must be taken to refer to steps by which the provisions of the Acts as to the provision of a burial ground are brought into full operation; though whether it has exactly the same meaning as in the Act of 1894 is not clear. This question is further discussed below.

The provisions as to the areas for which the provisions of the Burial Acts may be "adopted," using that expression in the sense just explained, are complicated. In the ensuing account of these provisions it will be convenient to avoid the expression "adoption," and to speak of the establishment of a burial board for an area as a com-

pendious way of describing the bringing into full operation of the 62 & 63 Vict. provisions of the Acts in question. c. 14, s. 4

In the first place, under sect. 10 of the Burial Act, 1852, a burial board may be established for any "parish," that expression being defined, by sect. 52, as meaning, unless there should be "something in the subject or context repugnant to such construction," "every place having separate overseers of the poor, and separately maintaining its own poor." It was held, under this Act, in *Reg. v. Sudbury Burial Board* (1858) E. B. & E. 264; 6 W. R. 551. s. c. nom. *Reg. v. St. Peter &c., Burial Board*, 27 L. J. Q. B. 232; 4 Jur. (N. S.) 948, that this definition of parish was not exclusive, and that a burial board might be established for an ancient ecclesiastical parish that had not separate overseers and did not separately maintain its own poor. (20. n.)

In that case, however, it was not pointed out that under the Act of 1852 a burial board appointed for any area other than a poor law parish, would not have had any means of obtaining funds; and the correctness of the decision is on that ground open to serious doubt: See *Reg. v. Walcot Overseers* (1862) 2 B. & S. 555; 31 L. J. M. C. 217; 6 L. T. 320; 10 W. R. 599; and see *Reg. v. Wright* (1861) 8 Jur. (N. S.) 260; 5 L. T. 345; 10 W. R. 86.

Sect. 11 of the Burial Act, 1855, provides that "where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places," a burial board may be established for the several parishes or places. Sect. 12 of the same Act also enables a burial board to be established for any parish, township, or other district not separately maintaining its own poor, which had before the passing of that Act a separate burial ground.

In *Finer v. Tonbridge Overseers* (1859), 2 E. & E. 9; 28 L. J. M. C. 251; 5 Jur. (N. S.) 1293; 7 W. R. 553, it was held that the last-mentioned enactment, where a burial board had been established for an ecclesiastical parish forming part of a poor law parish, impliedly authorized the establishment of a burial board for the residue of the poor law parish. And in *Reg. v. Tonbridge Overseers* (1884), 13 Q. B. D. 339; 53 L. J. Q. B. 488; 51 L. T. 179; 33 W. R. 24; 48 J. P. 740, it was held that under the enactment a burial board might be established for an area forming part of a larger area for which a burial board had already been established, though the result would be that the former area would have been placed under the jurisdiction of two burial boards.

Sect. 5 of the Burial Act, 1857, enables a burial board to be established for "any parish, new parish, township, or other district not separately maintaining its own poor, and which has no separate burial ground"; and provides that upon the establishment of a burial board for such an area "the powers of any other vestry or meeting and burial board, if any, shall then cease and determine, so far as relates to such parish, new parish, township, or district." Under this enactment it was held, in *Reg. v. Walcot, St. Swithun, Overseers* (1862), 2 B. & S. 571; 31 L. J. M. C. 221; 6 L. T. 325; 10 W. R. 602, that a burial board might be established for a new parish forming a portion of a poor law parish, though a burial board had already been established for the whole poor law parish. Probably the word "district" in this enactment is used as meaning only some area of similar nature to a parish or township, and not as including any area whatsoever. A

62 & 63 Vict.  
c. 14, s. 4  
(2), n.

former Home Secretary is known to have acted on this view of the meaning of the expression. Sect. 9 of the same Act renders the approval of the Secretary of State necessary to the establishment of a burial board for united parishes or places under the Act of 1855, where any of the several parishes or places separately maintains its own poor or has a separate burial ground; and enables the Secretary of State to direct that any such parish or place shall be excepted, in which case a burial board may be established for the remaining parishes and places.

Sect. 4 of the Burial Act, 1860, renders the approval of the Secretary of State necessary to the establishment of a burial board for any parish or place where such parish or place has been divided into parts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground.

By sect. 1 of the Burial Act, 1871, the manner in which the consent of the Secretary of State to the establishment of a burial board is to be obtained.

The above-mentioned provisions of the Acts apply equally within and without the metropolis; but they have been considerably affected outside the administrative county of London by provisions in the Local Government Act, 1894, which need not be further referred to here.

Under the Burial Acts the power of framing the necessary resolutions for the establishment of a burial board for a "parish" within the meaning of the Act of 1852, was in all cases in the vestry of the parish (15 & 16 Vict. c. 85, s. 10): the burial board was to be elected by the vestry (*ib.*, s. 11); and the burial board were in many respects subject to the control of the vestry. In other areas above mentioned for which a burial board might be established, the power of passing the necessary resolutions for the establishment of a burial board, and the power of electing and controlling the burial board appear in all cases to have been in the "vestry or meeting in the nature of a vestry" for the area (see 18 & 19 Vict. c. 128, ss. 11, 12; 20 & 21 Vict. c. 81, s. 5). The parishes in London under elective vestries appear to be in every case parishes within the Burial Act, 1852, and it is clear that the elective vestry of such a parish are a vestry within that Act: see sect. 8 of the Metropolis Management Act, 1855. And in London the powers under the Burial Acts of the vestry of a parish, or of the vestry or meeting in the nature of a vestry for an area other than a parish, remain substantially unaffected except so far as the transfer of the functions of a burial board to an elective vestry have in some cases rendered the election of a burial board unnecessary, and caused the controlling powers of the vestry to coalesce with the executive powers under the Acts: see the saving in sect. 91 of the Metropolis Management Act, 1851, as to the vesting, etc., of an area other than a parish with an elective vestry.

It should be added that by sect. 23 of the Burial Act, 1852, the vestries of any parishes which have respectively resolved to provide burial grounds may concur in providing one burial ground for the common use of the parishes upon terms to be agreed upon, and in that case the burial boards affected for the respective parishes are to act as a joint burial board for the whole area. And by sect. 1 of the Burial Act, 1857, it is provided that where a joint burial board is thus constituted for more than two parishes, the controlling powers of the vestry may be exercised by the vestries of the majority of the parishes.

Where the Acts have been adopted for a parish under an elective vestry before the appointed day, the council of the borough confining



that parish will, under the present section, succeed both to the functions of the burial board, either immediately or through the elective vestry in cases where the powers of the burial board have been transferred to the vestry, and to the controlling functions of the elective vestry. 62 & 63 Vict.  
c. 14, s. 4  
21, n.

If, however, the Burial Acts have been adopted for an area other than a parish under an elective vestry before the appointed day, and the controlling powers under the Acts are consequently in the hands of some vestry or meeting in the nature of a vestry other than an elective vestry, it appears that (unless it is otherwise provided by a scheme under the present Act) the controlling powers will not pass to the borough council, but will remain in such non-elective vestry or meeting in the nature of a vestry. In some cases of borough extensions, it may be mentioned, where the functions of a burial board have been transferred to the borough council, the controlling powers of the vestry have been abolished by a clause providing that the council shall execute the Burial Acts as if they had been constituted a burial board by Order in Council under the Burial Act, 1854. As to this Act, see *post*, p. 82.

The provisions as to the "adoption" of the Acts after the coming into operation of the present Act must now be considered.

Sub-sect. (4) of the present section provides that "any of the adoptive Acts may be adopted in a metropolitan borough in like manner as in a borough outside London, and not otherwise, and where any of the adoptive Acts adopted before the appointed day, does not extend to the whole borough, the Act may be adopted in the rest of the borough in like manner as if it were a separate borough and the borough council were the council thereof." It will be observed that this clause speaks of adoption of the Acts *in* a borough, not *for* a borough.

If the expression "adoption" in connection with the Burial Acts has the same meaning as in the Local Government Act, 1894, and refers, accordingly, to the passing of a resolution that a burial ground be provided, sub-sect. (4), as applied to the Burial Acts, has comparatively little meaning, since no special provision is made as to the passing of such a resolution in a non-metropolitan borough, and such resolutions may be passed by the vestry or meeting in the nature of a vestry for a parish or other area in such a borough just as they may for a parish or other area in a non-municipal urban district, or (except that the powers of the vestry or meeting in the nature of a vestry as to the passing of such resolutions are now in rural parishes vested in a parish meeting) in a rural district.

On this view of the matter, it seems that the borough council will be able to "adopt" the Acts for any parish in their borough as successors of the elective vestry of that parish, and, if they so adopt the Acts, will carry them out in that parish, and, as regards that parish, exercise also the controlling powers of the vestry. But they will not have power to adopt the Acts for their whole borough, unless their borough is identical with such a parish, nor, where the Acts are already in force for part of the borough, for the whole of the residue of their borough, unless that area is identical with such a parish. Further, on this view of the matter, the Acts might after the appointed day be adopted for any area in a borough falling within the description of areas for which a burial board can be established under the provisions of the Acts above mentioned, by a meeting in the nature of a vestry for that area. And, if the Acts were so adopted they would be carried out for such area by the borough council, acting, however,

62 & 63 Vict.  
c. 14, s. 4  
(2), n.

subject to the control of that meeting. Having regard to sect. 62 (2) of the Local Government Act, 1894, however, which provides that "any of the adoptive Acts shall not be adopted for any part of an urban district without the approval of the council of that district," and which applies, therefore, in municipal boroughs, with the exception probably of county boroughs, it seems that the Acts could not be adopted for such an area without the consent of the borough council.

There is, however, another possible interpretation of sub-sect. (4) of the present section as regards the Burial Acts.

Under the Burial Act, 1854, the council of a municipal borough may be constituted a burial board for their borough, or in some cases for their borough with the exclusion of certain parts thereof, by Order in Council, and in that case the borough council act as a burial board freed from the controlling powers exercised in the case of an ordinary burial board by the vestry or meeting in the nature of a vestry. And, it may be that sub-sect. (4) of the present section should be interpreted as applying the Act of 1854 to metropolitan boroughs, either to the exclusion of any other provision for the bringing of the Burial Acts into force, or as an additional method of bringing them into force. This would certainly be the most convenient interpretation of the sub-section, though, no doubt, it involves some stretching of the word "adoption."

Expenses under the Burial Acts at present fall on the poor rate, or, in the case of an area other than a parish, on a rate in the nature of the poor rate or an addition to the poor rate (15 & 16 Vict. c. 85, ss. 19, 22; 18 & 19 Vict. c. 128, ss. 11, 13; and see *Reg. v. Keighley Overseers*, *Loc. Gov. Chron.*, 1897, 47).

**The Public Libraries Acts, 1892 and 1893.**—The object of these Acts (55 & 56 Vict. c. 53; 56 Vict. c. 11), by the first of which the earlier Public Libraries Acts were repealed and replaced, is to enable public libraries, public museums, schools for science, art galleries, and schools for art to be provided.

The Act of 1893 has at present no application in London, and attention may therefore be confined for the moment to the Act of 1892.

That Act may be adopted for any "library district," and is to be deemed to have been adopted for any library district in which the Acts it repealed were in force immediately before its commencement (55 & 56 Vict. c. 53, ss. 1, 28, 30); and where adopted, it is carried out by a "library authority" (*ib.* s. 4).

In London, outside the City, the library districts are: every poor law parish, whether within the district of a district board or not, and every district of a district board (*ib.* ss. 1 (2), 22). But where the Act has been adopted in a parish within such a district, the parish is to be treated in all respects for the purposes of the Act as if it were outside the district; and where the Act has been adopted for such a district, it cannot afterwards be adopted for any parish in the district without the consent of the Local Government Board (*ib.* s. 22, (5, 6)).

Two or more neighbouring library districts for which the Act has been adopted are enabled to combine for carrying its provisions into execution (*ib.* ss. 9, 22 (4)); and provisions are made enabling a parish to be annexed to an adjoining or neighbouring library district for the purposes of the Act (*ib.* s. 10).

The Act provides that a rate for the purposes of the Act is not in any case to exceed one penny in the pound in any financial year; and

that it may be adopted subject to a condition cutting down such 62 & 63 Vict. maximum to a halfpenny or three farthings (*ib.* s. 2: as to the c. 14, s. 4 meaning of financial year see *ib.* s. 27). These provisions must now, (2), n. however, be read subject to sect. 8 of the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), which provides that "a limit imposed by any enactment on a rate shall be construed as being only a limit on the amount to be raised by that rate, and where by that limit or otherwise the sum to be raised or expended by a local authority is limited by any enactment by reference to a rate, the limit shall be varied so as to enable the local authority to raise or expend the same sum as they might have done if this Act had not passed." The limit, it may further be mentioned, is not to be computed by mere calculation from the rateable value of the area, but with reference to the amount a rate of so much in the pound would actually produce after the necessary deductions for allowances to owners of small tenements, unoccupied property, &c. (see *Ex p. Brown* (1862), 31 L. J. M. C. 108; S. C. nom. *Reg. v. Liverpool JJ.*, 8 Jur. (N. S.) 642; 6 L. T. 241). Where a condition has been imposed cutting down the maximum, the limit may afterwards be raised from a halfpenny to three farthings, or from either a halfpenny or three farthings to the full penny (55 & 56 Vict. c. 53, s. 2).

For the purpose of deciding in a library district in London as to the adoption of the Act, and as to fixing or raising the limitation on the amount to be raised for the purposes of the Act, the opinion of the "voters" is, upon the requisition of ten or more voters in the library district, to be taken by means of voting-papers in the manner provided by the Act (*ib.* ss. 3, 22). Certain of the powers of the library authority are also to be exercised only with the consent of the "voters," and in that case also their opinion on the matter is to be ascertained in like manner by means of voting papers (*ib.* ss. 3, 10, 16). The "voters" are the county electors registered in respect of qualifications within the library district (*ib.* s. 27).

Where the Act is adopted it is carried into effect by a library authority. Until lately the library authority in London was in all cases a body of commissioners appointed by the vestry or district board of the parish or district constituting the library district (*ib.* ss. 4, 5, 22 (2), and see, as to the election, constitution, and proceedings of the commissioners, ss. 5-8), special provision being made as to the appointment of the commissioners where library districts are combined, or where a parish is annexed for the purposes of the Act to another library district (*ib.* ss. 9, 10, 22 (4)). Lately, however, the functions of a body of library commissioners have in many cases been transferred to an elective vestry by an order of the Local Government Board under sect. 33 of the Local Government Act, 1894, as to which section see the note to sect. 16, *post*.

A body of commissioners acting as library authority are to some extent subject to the control of the vestry or district board by whom they are appointed.

Under the present section the councils of the metropolitan boroughs will succeed to the functions of existing library authorities, and will also have the controlling powers of the vestry or district board.

There is, however, nothing to transfer to the council generally the functions of the "voters," while on the other hand sect. 22, which *inter alia* regulates the taking of the opinion of the "voters" in a district under a district board, is repealed, and the provisions which regulate the taking of the opinion of the voters in a parish are not adapted so as to render them applicable to taking the opinion of the

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c. 14, s. 4  
(2). n.

voters in a borough. On the whole, however, it is submitted that the power of the voters will continue to exist, and that the provisions of the Act as to ascertaining the opinion of the voters must be read with such modifications as are required to fit them to cases where the Act is in force for a borough or part of a borough, whether that area is a parish or not.

The provisions as to the adoption of the Public Libraries Acts in future must now be considered.

Under sub-sect. (4) of the present section, the Public Libraries Acts may be adopted in a metropolitan borough in like manner as in a borough outside London and not otherwise.

In a borough outside London the provisions of sects. 2 and 3 of the Public Libraries (Amendment) Act, 1893, apply with regard to the adoption of the Act. Sect. 2 provides that, "Where a library district is an urban district—(1) The principal Act [*i.e.*, the Act of 1892] may, subject to the conditions contained in the second section of that Act, be adopted, and the limitation of the maximum rate to be levied for the purposes of that Act may within the limits fixed by that Act be fixed, raised, or removed by a resolution of the urban authority under this Act; (2) The consent of the urban authority, given by a resolution of that authority under this Act shall be substituted in an urban district for the consent of the voters in any case when the consent of the voters is required under the principal Act."

Sect. 3 deals with the formalities to be observed in connection with the passing of resolutions under the Act.

It will be observed that sect. 2 (1) of the Act of 1893 treats the fixing of the limitation on the maximum rate as distinct from the adoption of the Act; and that sub-sect. (4) of the present Act speaks only of the adoption of the adoptive Acts. It is arguable, therefore, that where the council of a metropolitan borough adopt the Act after the appointed day, it will be open to ten or more voters in the borough or part of a borough to require that the opinion of the voters should be taken as to whether there should be a limitation on the rate within the full penny. But this interpretation seems so unreasonable that the power of the borough council to adopt the Act would very probably be held to include a power to fix the limitation or to determine that there should be no limitation except the statutory limitation of a penny.

The other powers of the voters will, it seems, remain in existence as regards a borough or part of a borough for which the Acts are adopted after the appointed day.

The expenses under the Public Libraries Acts, in a library district being a parish, are to be defrayed out of a rate to be levied with and as part of the poor rate, subject to this qualification; "that every person assessed to the poor rate in the said parish in respect of lands used as arable, meadow, or pasture ground only, or as woodlands or market gardens, or nursery grounds, shall be entitled to an allowance of two-thirds of the sum assessed upon him in respect of these lands for the purposes" of the Acts (55 & 56 Vict. c. 53, s. 18 (1)). It seems that the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), does not apply to such a rate, and therefore, that the proportions in which different kinds of property should contribute to the rate are not affected by that Act (see *ib.* s. 1 (2 a)). In general, of course, the old proportions can be preserved by reducing the allowance in the case of such of the partially exempted land as falls within the definition of "agricultural land," to one-third.

In a library district being a district under a district board, the

expenses are to be paid by the board as part of their expenses under 62 & 63 Vict. the Metropolis Management Acts (55 & 56 Vict. c. 53, s. 22 (3)). c. 14, s. 4

In such a library district, therefore, there are no special exemptions (2), n. in favour of particular classes of property.

The existing exemptions will no doubt be preserved by a scheme under sect. 10 of the present Act. But unless specific provisions on the point are made by a scheme, a difficulty will arise in cases where the Acts are adopted by a borough council. The council will not adopt the Acts for a parish as such nor for a district of a district board as such, and consequently it will be doubtful whether the privileged classes of property ought to enjoy the partial exemption or not.

(3) The powers of a borough council shall, save as in this Act mentioned, extend to the whole of their borough.

Provided that any power or duty of the council under any Act, whether general or local, conferring powers in relation to some particular parish or district, or part of a parish or district, shall be exercised and performed by the council either throughout the borough or in a limited part thereof, or shall cease to be exercised and performed, as may be provided by a scheme under this Act, having regard to the object of the Act under which the power or duty arises, and to the nature of any change of area or alteration of boundary made by or under this Act.

(4) Any of the adoptive Acts may be adopted in a metropolitan borough in like manner as in a borough outside London, and not otherwise, and where any of the adoptive Acts adopted before the appointed day does not extend to the whole borough, the Act may be adopted in the rest of the borough in like manner as if it were a separate borough and the borough council were the council thereof.

**Note.—Adoption of Adoptive Acts.**—This sub-section has been discussed in the note to sub-sect. (2).

**Sect. 5.**—(1.) As from the appointed day the powers and duties of the London County Council under the enactments mentioned in Part One of the Second Schedule to this Act shall, subject to the conditions mentioned in that schedule, be transferred to each borough council as respects their borough.

Transfer of powers from London County Council.

**Note.—Transfer of Powers from London County Council.**—The powers and duties of the London Council, transferred to the borough councils by the present sub-section, are discussed in the note to Part I. of the Second Schedule. They consist of powers and duties under the London Building Act, 1894, as to

62 & 63 Vict. c. 14, s. 5 (1), n. the administration of provisions of that Act relating to wooden structures, sky-signs, and obstructions in streets; and powers and duties under the Public Health (London) Act, 1891, as to the registration of dairymen.

As to the expenses of and incidental to powers and duties transferred by the present Act from the London County Council to a borough council, see sect. 7.

(2.) As from the appointed day the powers of the London County Council under the enactments mentioned in Part Two of the Second Schedule to this Act may, subject to the conditions mentioned in that schedule, be exercised also by each borough council as respects their borough.

**Note.—Powers of London County Council exercisable by Borough Council.**—The powers conferred on borough councils by the present sub-section, taken in conjunction with Part II. of the Second Schedule, which are discussed at some length in the note to Part II. of that schedule, are some of them of very considerable importance. And it may be useful to summarise them very shortly here.

Firstly, the borough councils are given certain powers as to the demolition of buildings and structures that contravene the provisions of the London Building Act, 1894; but as to the scope of these powers there is a good deal of doubt.

Secondly, they are given powers to enforce the provisions of the London Building Act, 1894, as to timber-stacks and like erections.

Thirdly, they are given powers under the Metropolis Water Acts in relation to the regulations of any water company supplying water in the borough, as to the prevention of waste or misuse of water, or the undue consumption or contamination of water. Under these powers they will be able to take steps to secure alterations in such regulations and will have a right to be heard on inquiries as to any proposed alterations in such regulations.

Fourthly, they are given powers to make complaints to the Railway and Canal Commissioners, and to oppose complaints to these Commissioners made by others. Such complaints relate to alleged defaults by railway and canal companies in the discharge of their statutory duties.

Fifthly, they are given like powers with a county council for the acquisition of land. Under these powers the council will be able, if they cannot acquire land which they require by agreement, to apply to the Local Government Board for a Provisional Order enabling them to acquire land under the compulsory clauses of the Lands Clauses Acts. The powers for the acquisition of land thus given to the council will be in addition to various special powers for the acquisition of land for special purposes, which they will take by transfer from the various existing authorities to whose functions they will succeed.

Sixthly, they are given power to adopt Part III. of the Housing of the Working Classes Act, 1890. Part III. of that Act is mainly directed to enabling a local authority, where they have adopted its provisions, to provide lodging-houses for the working classes. Though, however, the council of a metropolitan borough are empowered to

adopt Part III. of the Act, there may be very considerable difficulty 62 & 63 Vict. in the way of their effectually carrying it out, seeing that it contains c. 14, s. 2 detailed provisions quite inapplicable to a metropolitan borough (2), n. council as to the manner in which it is to be carried out, and that the present Act does not, as might have been expected, make the adaptations in these provisions necessary to fit them to a case where Part III. is to be carried out by such a council. Possibly, however, this difficulty may be met by the provisions of a scheme made under the present Act.

Lastly, they are given powers to make bye-laws for the good order and government of their borough, and for the suppression of nuisances not capable of being dealt with summarily under statute law.

(3.) The Local Government Board may, if they think fit, on the application of the London County Council and of the majority of the borough councils, make a Provisional Order for transferring to all the borough councils any power exercisable by the County Council, or for transferring to the County Council any power exercisable by the borough councils.

**Note.—Transfer of Powers by Provisional Order.**—As to Provisional Orders under the present Act, see sect. 28 and the note thereto.

As to the expenses connected with powers transferred by Provisional Order under the present section, see sect. 7.

(4.) The Local Government Board may also, on the joint application of the London County Council and the Common Council of the City of London, make a Provisional Order transferring any power from the County Council to the Common Council, or from the Common Council to the County Council.

**Sect. 6.—**(1.) As from the appointed day the power and duty of maintaining any main road existing at the passing of this Act within a borough shall be transferred to the borough council, and the road shall vest in the borough council and shall cease to be a main road. Additional powers and duties of borough councils.

**Note.—Main Roads.**—"Main roads" in the technical sense in which the expression is used in the present sub-section, were first defined and placed in a position different from other roads by the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77). That Act provides that every turnpike road disturnpiked after December 31, 1870, whether before or after the passing of the Act of 1878, shall be a "main road"; enables other roads to be declared "main roads"; and provides for the dismaying of main roads, if it is found desirable, that is, for their reduction to the status of ordinary highways (see *ib.* ss. 13-16). Under the Act of 1878 a portion of the cost of maintaining a main road was to fall on the

62 & 63 Vict. c. 14, s. 6 (1), n. county, or, in certain instances, under a provision of very limited application, on the hundred (41 & 42 Vict. c. 77, ss. 18-20).

The provisions of the Act of 1878 as to main roads did not originally apply to London; see sect. 2 of that Act. But they were extended to the administrative county of London by the Local Government Act, 1888, under which Act the main roads in every administrative county were made maintainable by the county council, subject to provisions enabling the Common Council in the City of London, the administrative vestries and district boards in the rest of the administrative county of London, and urban authorities elsewhere, to claim to retain the power of maintaining main roads; see sects. 11 and 41 (4) of the Act of 1888. Where a main road is thus retained the county council contribute annually towards the cost of its maintenance.

The effect of this legislation as regards London is that all roads in London disturnpiked subsequently to December 31st, 1870, became main roads on the coming into operation of the Local Government Act, 1888, and that the general law as to dismaining main roads and declaring ordinary highways to be main roads thereupon came into force in London.

Though under the present sub-section existing main roads in London, outside the City, will be reduced to the status of ordinary highways, and will consequently become repairable by the borough councils, the provisions under which roads may be declared main roads are not repealed as to London, and it seems that after the present Act comes into operation these provisions may be acted upon in London even as regards the roads dismained by the present sub-section.

The provisions under which highways may be declared main roads are contained in sect. 15 of the Highways and Locomotives Act, 1878 (41 & 42 Vict. c. 77), which provides as follows:—

“Where it appears to any highway authority that any highway within their district ought to become a main road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station, or otherwise, such highway authority may apply to the county authority [now the county council; see 51 & 52 Vict. c. 41, s. 3 (viii.)] for an order declaring such road, as to such parts as aforesaid, to be a main road; and the county authority, if of opinion that there is probable cause for the application, shall cause the road to be inspected, and, if satisfied that it ought to be a main road, shall make an order accordingly.

“A copy of the order so made shall be forthwith deposited at the office of the clerk of the peace of the county, and shall be open to the inspection of persons interested at all reasonable hours; and the order so made shall not be of any validity unless and until it is confirmed by a further order of the county authority made within a period of not more than six months after the making of the first-mentioned order.”

When a road in a metropolitan borough is thus declared a main road after the coming into operation of the present Act, the council of the borough will have power, under sects. 11 (2) and 41 (4) of the Local Government Act, 1888, at any time within twelve months from the time when the road becomes a main road, to claim to retain the power and duty of maintaining it, and in that case the county council will be required to contribute towards its maintenance. It is not within the scope of this work to discuss the provisions as to contributions by a county council towards the maintenance of a main road or the numerous cases that have been decided with reference to such contributions.



In the county of London main roads may be dismained by provisional order of the Local Government Board, made on the application of the county council, and confirmed by Parliament (41 & 42 Vict. c. 14, s. 6 c. 77, ss. 16, 34). Elsewhere the necessity for a provisional order has been abolished by the Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63, s. 4), but that Act does not extend to the county of London, though it does apparently extend to the City.

(2.) Where a highway in a borough is repairable by the London County Council by reason of its being the roadway or footway of a bridge, embankment, or otherwise, the borough council shall, if so required by the county council, undertake the maintenance and repair thereof in consideration of such annual payment by the county council as may from time to time be agreed on, or in default of agreement be finally determined by the Local Government Board, and for the purpose of the undertaking the borough council shall have the same powers and be subject to the same duties and liabilities as if the highway were vested in them.

**Note.—Roads over Bridges, etc.**—Roads over bridges and roads leading to bridges may, in some cases, be repairable by the London County Council by virtue of the common law obligation of the inhabitants of a county to repair not only the substructure of bridges, but also the roads over bridges and the approaches to bridges. As to this common law obligation, which was taken away by sect. 21 of the Highway Act, 1835 (5 & 6 Will. IV. c. 50), as to bridges built subsequently to that Act, see Glen's "Highways" (2nd ed.) pp. 118, *et seq.*

The present sub-section will, however, have a more extensive application to roads repairable by the London County Council under the numerous special Acts relating to bridges and their approaches and embankments in London.

As to the determination of questions by the Local Government Board under the present Act, see sect. 28 (3).

(3.) The power of a borough council to close or stop up a street under section eighty-four of the Metropolis Management Amendment Act, 1862, shall not require the sanction or allowance of the London County Council. Provided that before closing or stopping any such street the borough council shall give notice to the councils of any contiguous boroughs.

**Note.—Closing of Streets.**—Sect. 84 of the Metropolis Management Amendment Act, 1862, provides that "it shall be lawful for any vestry or district board [*with the previous sanction of the Metropolitan Board of Works*], to close or stop up any street within their parish or district, during the execution of any paving, sewerage, or other works by such vestry or board in such street, and to keep the same closed and stopped up for such time as shall be necessary in that behalf [*and allowed by the Metropolitan Board*]."

62 & 63 Vict.  
c. 14, s. 6  
(3), n.

The words in italics are expressly repealed as from the appointed day by sect. 35 (2) of the present Act and Sched. III.

(4.) It shall be the duty of each borough council to enforce within their borough the byelaws and regulations for the time being in force with respect to dairies and milk, and with respect to slaughter-houses, knackers' yards, and offensive businesses, and for the purpose of performing this duty the borough council shall in all cases have the same powers of entry as they have in the case of slaughter-houses and knackers' yards, and if the council make default in performing this duty, the provisions of the Public Health (London) Act, 1891, shall apply as if the default were a default under that Act.

54 & 55 Vict.  
c. 76.

**Note.—Dairies and Milk.**—Regulations with reference to dairies and milk made by the Metropolitan Board of Works on July 3rd, 1885, are at present in force in London.

These regulations were made under Art. 13 of the Dairies, Cowsheds, and Milkshops Order of 1885, which Order was made by the Privy Council under sect. 34 of the Contagious Diseases (Animals) Act, 1878 (41 & 42 Vict. c. 74). By sect. 9 of the Contagious Diseases (Animals) Act, 1886 (49 & 50 Vict. c. 32), the powers of the Privy Council under sect. 34 of the Act of 1878 were transferred to the Local Government Board, and the section was otherwise amended; but it is thereby provided that "the Dairies, Cowsheds, and Milkshops Order of 1885, and any regulations thereunder, or having effect in pursuance thereof, made by a local authority under the principal Act [the Act of 1878], other than the local authority of a county, shall be deemed to have been made respectively by the Local Government Board and by a local authority under this section." This provision preserved the regulations of the Metropolitan Board of Works of 1885.

The above-mentioned provisions of the Contagious Diseases (Animals) Acts, which were excepted from the general repeal of those Acts by the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), are now repealed, as regards London, by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), and are replaced by sect. 28 of that Act, which provides as follows:—

"(1.) The Local Government Board may make such general or special orders as they think fit for the following purposes, or any of them, that is to say,—

- "(a) for the registration with the county council of all persons carrying on the trade of dairymen;
- "(b) for the inspection of cattle in dairies, and for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies in the occupation of persons carrying on the trade of dairymen;
- "(c) for securing the cleanliness of milk vessels used for containing milk for sale by such persons;
- "(d) for prescribing precautions to be taken for protecting milk against infection or contamination;
- "(e) for authorising the county council to make bye-laws for the purposes aforesaid, or any of them."

The Local Government Board have not, however, as yet, exercised 62 & 63 Vict. their powers under the above section; and the above-mentioned Order c. 14, s. 6 of 1885, and the regulations of the Metropolitan Board of Works (4), u. under it, remain in force by virtue of sect. 142 (2, b) of the Public Health (London) Act, 1891, which provides that "all orders, bye-laws, rules, regulations, and notices duly made or issued under or having effect in pursuance of any Act hereby repealed shall be of the same validity and effect as if they had been given, made, or issued under this Act, and any penalties recoverable under any such order, bye-law, rule, regulation, or notice may be recovered as if they were imposed by bye-laws under this Act."

By sect. 5 (1) of the present Act and Part I. of the 2nd Schedule, the power of the London County Council "under sect. 28 of the Public Health (London) Act, 1891, of registering dairymen," is transferred to the borough councils, subject to the conditions in that schedule mentioned.

At present this must be read as referring to the power of registering dairymen possessed by the London County Council as the local authority for London, outside the City, under Art. 6 of the Order of 1885.

"Dairyman" is defined by sect. 141 of the Act of 1891 as including "any cowkeeper, purveyor of milk, or occupier of a dairy." As to the meaning of "cowkeeper," see *Umfreville v. London County Council* (1896), 66 L. J. Q. B. 177; 75 L. T. 550; 61 J. P. 84.

**Slaughter-houses, Knackers' Yards, and Offensive Businesses.**—Several series of bye-laws dealing with these businesses and made under the Slaughter-houses, &c. (Metropolis) Act, 1874 (37 & 38 Vict. c. 67), either by the London County Council or by the Metropolitan Board of Works, are at present in force in London. The businesses to which such bye-laws relate are those of animal charcoal manufacturer, blood boiler, blood drier, bone boiler, catgut maker or catgut manufacturer, fat extractor, fat melter, glue and size manufacturer, gut scraper, knacker, manure merchant, slaughterer of cattle, soap boiler, tallow melter, and tripe boiler.

The Slaughter-houses, &c. (Metropolis) Act, 1874, is repealed by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), and the provisions of the former Act under which the bye-laws above mentioned were made are replaced by provisions in sect. 19 of the latter Act.

Under that section the London County Council have power to make bye-laws with respect to the following businesses:—Blood boiler, bone boiler, manure manufacturer, soap boiler, tallow melter, knacker, fellmonger, tripe boiler, slaughterer of cattle or horses, or any other business which the county council may declare by order, confirmed by the Local Government Board, and published in the London Gazette, to be an offensive business.

The power of the London County Council to make bye-laws under this section has not yet been exercised. The bye-laws above mentioned made under the repealed Act of 1874 are preserved by sect. 142 of the Public Health (London) Act, 1891, above quoted.

**Power of Entry.**—The powers of entry that the council of a metropolitan borough will have for the purposes of their duties under this sub-section are given by sect. 20 (7) of the Public Health (London) Act, 1891, which provides that "the sanitary authority shall have a right to enter any slaughter-house or knacker's yard at any hour by day or at any hour when business is in progress or is usually carried on therein, for the purpose of examining whether there is any contra-

62 & 63 Vic. c. 14, s. 6 (4), n. vention therein of this Act or of any bye-law made thereunder." As to the exercise of the right, see sect. 115 of the Act and *Fines v. North London Collegiate School* (1899) 63 J. P. 244.

**Default of Council.**—The provisions of the Public Health (London) Act, 1891, as to default by a sanitary authority in the execution of that Act, are contained in sects. 100 and 101.

Sect. 100 enables the London County Council, on its being proved to their satisfaction that a sanitary authority have made default with respect to certain matters, to exercise certain powers of the sanitary authority with reference to these matters, and provides for the recovery of the expenses of exercising their powers from the sanitary authority in default in certain cases.

Sect. 101 enables the Local Government Board, upon complaint by the London County Council, and after inquiry, to make an order for the performance of their duty by a sanitary authority in default. If the order is not complied with it may be enforced by mandamus, or the Local Government Board may appoint the county council to perform the duty. The section contains various provisions as to the effect of an appointment of the county council to perform the duty of a sanitary authority in default.

(5.) A borough council may, with the consent of the Local Government Board, alienate any land for the time being vested in the council, and the proceeds of the sale of any land sold by the council shall be applied in such manner as the Local Government Board sanction towards the discharge of any loan of the council or otherwise for any purpose for which capital may be applied by the council.

**Note.—Alienation of Land.**—The power to alienate land under the present subsection will be in addition to any special power of alienating land which the borough council may have; but the provision as to the application of the proceeds of sale will apparently override any special provisions in that behalf.

The most general power that administrative vestries and district boards have to alienate land, is under sect. 154 of the Metropolis Management Act, 1855; but that section, except the last few words which deal with the letting of land, is repealed except so far as it applies to the Metropolitan Board of Works (now the London County Council), by sect. 35 (2) of the present Act and Sched. III.

Recreation grounds, open spaces, and land held upon trusts which prohibit building thereon, are excepted from the operation of the present sub-section, by sect. 32.

The council of a metropolitan borough will generally have power to let land, which they possess and do not for the time being require, under the unrepealed provisions of sect. 154 of the Metropolis Management Act, 1855. And it seems, though the point is not free from doubt, that they will have a general power, with the consent of the Local Government Board, to let any land, which they possess and which they can conveniently spare, under sect. 177 of the Public Health Act, 1875; as to the application of that section, see the note to Part II. of Sched. II., on the "Acquisition of Land." They may also in particular cases have special powers to let land.

It may be observed that the council of a metropolitan borough will not in general be under any obligation to dispose of superfluous land belonging to them. Such an obligation may, however, attach in particular cases, for example under sect. 155 of the Metropolis Management Act, 1855, under which where land has been sold to a vestry or district board the vendor may have reserved a right of preemption in the event of the land becoming superfluous.

(6) A borough council shall have the same powers of promoting and opposing Bills in Parliament, and of prosecuting or defending any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of their borough, as are conferred on borough councils outside London by the Borough Funds Act, 1872, and the provisions of that Act shall extend to the council of a metropolitan borough as if that council were included in the expression "governing body" and the borough were a district in that Act mentioned.

**Note.—Borough Funds Act.**—The provisions of the Borough Funds Act, 1872 (35 & 36 Vict. c. 91), which will apply in the case of the council of a metropolitan borough are as follows:—

Sect. 2. "When in the judgment of a governing body in any district it is expedient for such governing body to promote or oppose any local and personal bill or bills in Parliament, or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district, it shall be lawful for such governing body to apply the borough fund, borough rate, or other the public funds or rates under the control of such governing body to the payment of the costs and expenses attending the same; and when there are several funds or rates under the control of the governing body, such governing body shall determine out of which fund or funds, rate or rates, such expense shall be payable, and in what proportions: provided that nothing in this Act contained shall authorize any governing body to promote any bill in Parliament for the establishment of any gas or waterworks to compete with any existing gas or water company established under any Act of Parliament: Provided that no powers contained in this clause shall apply in any case where the promotion of or opposition to a bill by a governing body has been decided by a committee of either House of Parliament to be unreasonable or vexatious."

Sect. 3. "No payment to any member of a governing body for acting as counsel or agent in promoting or opposing any such bill shall be charged as aforesaid."

Sect. 4. "No expense in relation to promoting or opposing any bill or bills in Parliament shall be charged as aforesaid unless incurred in pursuance of a resolution of an absolute majority of the whole number of the governing body at a meeting of the governing body, after ten clear days' notice by public advertisement of such meeting and of the purpose thereof in some local newspaper published or circulating in the district, such notice to be in addition to the ordinary notices required for summoning such meeting, nor unless such resolution shall have been published twice in some newspaper or newspapers circulating in the district, and shall have received, in respect of matters within the jurisdiction of the Local Government Board, the approval

62 & 63 Vict.  
c. 14, s. 6  
(6), n.

of such board, and in respect of other matters, the approval of one of Her Majesty's Secretaries of State, and in case of the promotion of a bill in Parliament no further expense shall be incurred or charged as aforesaid after the deposit of the bill, unless the propriety of such promotion shall be confirmed by such absolute majority at a further special meeting to be held in pursuance of a similar notice not less than fourteen days after the deposit of the bill in Parliament: Provided further that no expense in promoting or opposing any bill in Parliament shall be charged as aforesaid unless such promotion or opposition shall have had the consent of the owners and ratepayers of that district, to be expressed by resolution in the manner provided in the Local Government Act (1858)<sup>1</sup> for the adoption of that Act."

Sect. 5. "The approval of the Local Government Board or one of Her Majesty's principal Secretaries of State, as the case may be, shall not be given to any such resolution as aforesaid until the expiration of seven days after the second publication thereof, as provided by this Act, and in the meantime any ratepayer within the district of the governing body may give notice in writing to the Local Government Board or Secretary of State objecting to such approval."

Sect. 6. "All costs, charges, and expenses incurred under the provisions of this Act shall, before the same becomes chargeable, be examined and allowed by some person to be authorized by one of Her Majesty's principal Secretaries of State or by the Local Government Board, as the case may be."

Sect. 7. "The Local Government Board, or one of Her Majesty's principal Secretaries of State, shall have power to direct a local enquiry to be held upon any application under this Act, by any person or persons whom they may respectively nominate for the purpose, and to charge the costs and expenses of such local enquiry upon the governing body or the person by whom such application shall be made."

Sect. 8. "Nothing in this Act shall extend or be construed to alter or affect any special provision which is or shall be contained in any other Act for the payment of the costs, charges, and expenses intended to be provided for by this Act, or to take away or diminish any rights or powers now possessed or enjoyed by any governing body, or which are or shall be vested in or exercisable by the inhabitants of any district under any general or special Act."

Sect. 10. "The provisions of this Act shall not extend to applications for any bill in Parliament for any object which would, for the time being, be obtainable by Provisional Order."

The remaining sections of the Act are sect. 1, which defines "governing body"; sect. 9, which repealed certain provisions of the Towns Improvement Clauses Act, 1847; and sect. 11, which provides that the Act shall not apply to Ireland nor in London. As regards London sect. 11 is practically repealed, except as to the City, by the present sub-section.

**Legal proceedings.**—The only reported case, so far as the writer is aware, in which the provisions of the Borough Funds Act as to expenditure on litigation have come in question, is *A. G. v. Tyne-mouth Corporation*. There it was held in the Court of Appeal ([1898] 1 Q. B. 604; 67 L. J. Q. B. 489; 78 L. T. 372; 46 W. R. 518; 62 J. P. 292) that the Act did not justify a municipal corporation in defraying costs incurred by the chief constable of the borough in opposing licensing appeals at quarter sessions. And *A. L. Smith, L. J.*

(1) Now the Public Health Act, 1875, see *post*, p. 96.

said, speaking of sect. 2 of the Act: "In my judgment, this section 62 & 63 Vict. means the taking of some legal proceeding by or on behalf of the c. 14, s. 6 inhabitants against some person or persons in order to promote the (6), n. interests of the inhabitants, or the defending of some legal proceedings brought against the corporation or the inhabitants by some person or persons in order to protect the interests of the inhabitants. The intervention of a police constable as a respondent at quarter sessions in a licensing appeal is neither the one nor the other." In the House of Lords, where the decision of the Court of Appeal in the case was affirmed (*Tynemouth Corporation v. A. G.* [1899], A. C. 293; 68 L. J. Q. B. 752), Lord Macnaghten said, with reference to the Borough Funds Act, "It was objected on behalf of the respondents that the proceedings, on which the appellants embarked in the case of the appeal to quarter sessions were not 'legal proceedings' within the meaning of the Act, and that if they could be properly so described they were not necessary for the protection of the interests of the inhabitants. I am inclined to agree with them on both points. But it is not necessary to express a final opinion on the subject or to define the proceedings to which the Act extends. It is enough to say that if the appellants could have brought themselves within the protection of the Act they have not done so. Whatever may have been the views of individual members of the council, it is clear that the governing body as a body have never formed nor expressed any judgment on the expediency of the proceedings which they authorised; and if that difficulty were out of the way, it is clear that the costs and expenses now in question have not been examined and allowed in manner prescribed by sect. 6 of the Borough Funds Act, 1872."

These observations suggest that it might be prudent, where the council of a metropolitan borough propose to defray the costs of litigation under the Act, for them to pass a formal resolution to the effect that the litigation is in their opinion necessary for the promotion or protection of the interests of the inhabitants of the borough.

The council of a metropolitan borough will have certain powers of defraying the costs of litigation apart from the Borough Funds Act. It is a well-established principle that all bodies of public trustees, including local authorities, have implied power to expend their funds in protecting their property, powers, and privileges. And this principle justifies a local authority in defraying the cost of litigation necessary to protect their property, powers, and privileges apart from any express statutory authority (see *A. G. v. Norwich Corporation* (1837), 2 Myl. & Cr., 406; 1 Jur. 398; *Reg. v. Tamworth Corporation* (1868), 19 L. T. 433). The case last cited shows that a local authority may be justified on this principle in defraying the costs of litigation in which they are interested, though they are not themselves parties to it. On the other hand a local authority require statutory authority to justify expenditure on litigation, however desirable in the interests of the inhabitants of this area, which does not threaten the property, powers, or privileges of the authority: see *A. G. v. Camberwell Vestry* (1894), 63 L. J. Ch. 878; 71 L. T. 478.

The council of a metropolitan borough will be a local authority within the Metropolis Water Act, 1897 (60 & 61 Vict. c. 56), and will accordingly have the powers of litigating questions relating to the supply of water by the metropolitan water companies thereby conferred on such local authorities. By sect. 1 of that Act any such local authority, as well as any water consumer, are empowered to complain to the Railway and Canal Commissioners that any of the metropolitan water companies "has failed to perform some statutory

62 & 63 Vict. c. 14, s. 6 (6), n. duty of the company." And by sect. 2 "a local authority may aid any water consumer in obtaining the determination of any question which appears to the local authority to be of interest to water consumers within the district of such local authority with respect to the rights, duties, and liabilities of any of the metropolitan water companies in reference to the quantity or quality of water supplied or the charges made by them. A local authority aiding any legal proceedings under this section may, if the Court think fit, be made a party to the proceedings, and shall be liable for costs accordingly."

The council of a metropolitan borough will also have power to take proceedings before the Railway and Canal Commissioners in relation to the provision of traffic facilities by railway companies and other similar matters, under sect. 7 of the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), which is applied to such councils by sect. 5 (2) of the present Act and Sched. II. Part II. On this point see further the note to that part of that schedule.

**Opposition to, or Promotion of, Bills in Parliament.**—Apart from the Borough Funds Act, the council of a metropolitan borough will be able to justify expenditure on opposition to a Bill threatening their property, powers and privileges, on the general principle already alluded to under which local authorities have power to expend their funds in protecting their property, powers and privileges. See *Reg. v. Norfolk Commissioners of Sewers* (1850), 15 Q. B. 549; *A. G. v. Wigan Corporation* (1854), 5 De G. M. & G. 52; 23 L. J. Ch. 429; 18 Jur. 299; *A. G. v. Brecon Corporation* (1878), 10 Ch. D. 204; 48 L. J. Ch. 153; 40 L. T. 52; 27 W. R. 332; *Reg. v. White* (1884), 14 Q. B. D. 358; 52 L. T. 116; 33 W. R. 248; S. C. nom. *Reg. v. Sibley*, 54 L. J. M. C. 23. But see *Leith Magistrates and Council v. Leith Harbour Commissioners* (1899), 15 Times L. R. 492. And in cases falling within this principle the council will be able to justify expenditure upon opposition to a bill, though the formalities prescribed by the Borough Funds Act have not been observed (see *A. G. v. Brecon Corporation*, *supra*). On the other hand, unless the provisions of the Act are complied with the council will not be able to justify expenditure in opposing a bill, however detrimental to the interests of the inhabitants of the borough, unless it threatens the council's property, powers, or privileges. See *Reg. v. Sheffield Corporation* (1871), L. R. 6 Q. B. 652; 40 L. J. Q. B. 247; S. C. nom. *Roberts v. Sheffield Corporation*, 24 L. T. 659; 19 W. R. 1159; *Reg. v. Marris* (1857), 5 W. R. 254; see also *Reg. v. Kingsbridge Highway Board* (1868), 18 L. T. 554.

Where a borough council propose to incur expense in promoting or opposing a bill in Parliament under the Borough Funds Act, it will be necessary for such council in accordance with sect. 4 of the Act: (1) to pass a special resolution in favour of the proposed expenditure; (2) to advertise that resolution; (3) to obtain the consent of the owners and ratepayers; (4) to obtain the approval of the Local Government Board or Secretary of State as the case may be; and (5) in the case of the production of a Bill to pass a confirming resolution with the deposit of the Bill.

**Consent of Owners and Ratepayers.**—Under sect. 4 of the Act the consent of the owners and ratepayers was to be given in the manner provided by the Local Government Act, 1858. But under sect. 313 of the Public Health Act, 1875, such consent must now be given in the manner provided by that Act.

The Provisions of the Public Health Act, 1875, as to resolutions



of owners and ratepayers, which are dealt with at some length below, 62 & 63 Vict. are very ill suited to such areas as metropolitan boroughs and are c. 14, s. 6 likely to give rise to serious difficulties. (6), n.

To obtain the necessary consent a meeting of owners and ratepayers must first be convened; but the borough council will have no power to convene the meeting on their own initiative. It will be necessary to obtain a requisition for the convention of the meeting from a certain number of owners and ratepayers. At the meeting a poll may be demanded; and if demanded must be taken by means of voting papers distributed to the persons entitled to vote. The taking of a poll in such an area as a metropolitan borough will of course involve very substantial expense. If the resolution in favour of the proposed expenditure on parliamentary proceedings is carried, these expenses will fall on the borough council. But if the resolution is not carried, the council will have no power to pay the expenses; and in that case they will fall on the persons on whose requisition the meeting was convened, or, if those persons have not given security for the expenses as they may be required to do, on the mayor of the borough.

The rules regulating the convention of a meeting of owners and ratepayers under the Public Health Act, 1875, and the proceedings thereat, which are contained in Sched. III. to that Act, may now be set out and commented on. They are as follows:—

*Rule 1.* “For the purpose of passing a resolution of owners and ratepayers under this Act, a meeting shall be summoned on the requisition of any twenty ratepayers or owners, or of any twenty ratepayers and owners, resident in the district or place with respect to which the resolution is to be passed.”

It is submitted, having regard to rule 6 of the schedule, that “owner,” and “ratepayer,” in this rule must have the same meaning as in Sched. II. to the Act of 1875, see rules 10 & 11 of that schedule, quoted *post* pp. 99, 100, and the observations thereon.

As has been pointed out a requisition under this rule is necessary before the meeting can be convened. The borough council will have no power to convene the meeting on their own initiative.

*Rule 2.* “The summoning officer of such meeting shall be—

“In boroughs, the mayor;

“In Improvement Act districts, the chairman of the improvement commissioners;

“In local government districts, the chairman of the local board;”

\* \* \* \* \*

The rest of the rule relates to places in rural districts. It seems clearly intended that in a metropolitan borough the mayor should be the summoning officer.

*Rule 3.* “Ratepayers or owners making a requisition for the summoning of such meeting shall, if required, give security in a bond, with two sufficient sureties, for repayment to the summoning officer, in the event of the resolution not being passed, of the costs incurred in relation to such meeting or any poll taken in pursuance of any demand made thereat; the amount of the security to be given by such sureties, and their sufficiency, and the amount of such costs, to be settled by agreement between the summoning officer and such ratepayers or owners, or, in case of dispute, by a court of summary jurisdiction.”

If the persons making the requisition do not give security under this rule, or so far as the security does not extend, the costs above referred to will, it seems, having regard to rule 8, fall on the sum-

62 & 63 Vict. c. 14, s. 6 (6), n. moning officer personally, unless the resolution is carried. If the resolution is carried, the costs will fall on the borough council under rule 8.

*Rule 4.* "The summoning officer shall, on such requisition as aforesaid, fix a time and place for holding such meeting, and shall forthwith give notice thereof—

"By advertisement in some one or more of the local newspapers circulated in the district or place;

"By causing such notice to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed."

*Rule 5.* "The summoning officer shall be the chairman of the meeting unless he is unable or unwilling to preside, in which case the meeting on assembling shall choose one of its number as chairman, who may, with the consent of a majority of the persons present, adjourn the same from time to time."

*Rule 6.* "The chairman shall propose to the meeting the resolution, and the meeting shall decide for or against its adoption: Provided, that if any owner or ratepayer demands that such question be decided by a poll of owners and ratepayers, such poll shall be taken by voting papers in the Form O. in Schedule IV. to this Act, in the same way and with the same incidents and conditions as to the qualification of electors and scale of voting, as to notice to be given by the returning officer, delivery filling up and collection of voting papers, as to the counting of votes, as to penalties for neglect or refusal to comply with the provisions of the Act, and in all respects whatsoever as is provided by the rules for the election of local boards in Schedule II. to this Act; except that in districts or places where there is no register of owners and proxies under this Act, any owner or proxy shall be entitled to have a voting paper delivered to him if at least fourteen days before the last day appointed for delivery of the voting papers he sends a claim in writing to the summoning officer containing the particulars required by Schedule II. to this Act to be contained in claims to be entered on the register of owners and proxies, and except that the provisions with respect to certain specified days of the month shall not apply.

"For the purposes of such poll the summoning officer shall be the returning officer, and shall have the powers and perform the duties of a returning officer under Schedule II. to this Act, so far as the same are applicable to a poll under this schedule.

"If no poll is demanded, or the demand for a poll is withdrawn by the persons making the same, a declaration by the chairman shall, in the absence of proof to the contrary, be sufficient evidence of the decision of such meeting."

Schedule II. to the Act is in terms repealed by the Local Government Act, 1894; but it apparently remains in force as far as it is incorporated with the above rule. Its provisions so far as they appear to apply to a poll under that rule are dealt with below.

At the poll the voting will be according to a scale, the persons entitled to vote having more or fewer votes according to the value of the property they own or occupy. But at the meeting the vote should be taken by show of hands, so that each owner or ratepayer present will have one vote and no more: see *Re Horbury Bridge Coal, &c., Co.* (1879), 11 Ch. D. 109; 48 L. J. Ch. 341; 40 L. T. 353; 27 W. R. 433.

Schedule II. required a register of owners and proxies to be kept in local government districts for the purposes of the local board

elections. There will, however, be no obligation on the council of a 62 & 63 Vict. metropolitan borough to keep such a register; and it is very doubtful c. 14, s. 6 whether they will have power to incur expenditure in the preparation (6), n. of such a register, and whether, if a register were kept, it would have any statutory effect. See *Ward v. Sheffield Corporation* (1887), 19 Q. B. D. 22; 56 L. J. Q. B. 418.

It will be for the returning officer to fix the dates for the various proceedings. And he must so fix them as to allow the owners a reasonable time for sending in their claims in accordance with the above rule: see *Ward v. Sheffield Corporation, supra*.

The form of voting paper is given, *post* p. 105.

Rule 7. "A copy, under the hand of the summoning officer, of every resolution so passed, shall be forwarded by him to the Local Government Board; and it shall be his duty to publish a copy thereof by advertisement for three successive weeks in some one or more of the local newspapers circulated in the district or place, and by causing a copy thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed."

Rule 8. ["Where in pursuance of a resolution passed in manner provided by this schedule any place is constituted a local government district, all costs incurred by the summoning officer in relation to the meeting, and any poll taken in pursuance of any demand made thereat, shall be a first charge on the general district rates leviable within such district;] in the case of a resolution so passed by owners or ratepayers in any urban district, such costs shall be paid out of the fund or rate applicable by the urban authority to the general purposes of this Act."

The reference to the fund or rate applicable to the purposes of the Public Health Act, must of course be read as referring in the case of a metropolitan borough to the fund or rate applicable to the expenses of the council.

If the resolution is not carried, it will be observed, the expenses cannot lawfully be paid by the local authority: and in that case they must fall upon the persons who requisitioned the meeting, or their sureties, under rule 3; or, if no security has been given under that rule, or so far as the sums thereby secured are insufficient, they must apparently fall on the summoning officer personally.

The rules in Schedule II. to the Public Health Act, 1875, which appear to be applicable to a poll consequent on a meeting of owners and ratepayers are as follows:—

Rule 10. "The word 'owner,' when used in relation to the right of voting [at any election of a local board], shall mean any person for the time being in the actual occupation of any kind of property in the district or part of a district for which he claims to vote, rateable to the relief of the poor, and not let to him at a rackrent, or any person receiving on his own account, or as mortgagee or other incumbrancer in possession, the rackrent of any such property."

"Rackrent" is defined by sect. 4 of the Public Health Act, 1875, as meaning, in substance, rent not less than two thirds of the rateable value.

As to disqualifications for voting, see the observations on rule 12.

Rule 11. "A person shall not be deemed a ratepayer or be entitled to vote as such [at any such election] unless he has been rated to the relief of the poor in the district or part of a district for which he claims to vote for the space of one whole year immediately preceding the day of tendering his vote, and has also before that day paid all rates made on him for the relief of the poor in such district or part of a district for the period of one whole year, and all rates due from him under this

62 & 63 Vict. Act, except rates which have been made or become due within the six months immediately preceding.”

c. 14, s. 6  
(6), n.

“Ratepayer” is not defined, except in this negative manner.

Rule 44 seems to assume that every ratepayer will have a residence in the district, but it would seem that a non-resident ratepayer may apply for a voting paper under rule 49, and vote.

Rule 11 itself is very vague and ambiguous. In particular it is not clear whether the last words of the rule apply to “rates made under this Act” only, or both to those rates and to the poor rate. In a metropolitan borough there will apparently be no “rates made under this Act” within the meaning of the rule.

The Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41, ss. 7, 15, 19), as explained and amended by sect. 14 of the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), and the Assessed Rates Act, 1879 (42 Vict. c. 10), contains provisions saving the rights of occupiers in respect of any qualification or franchise where the owner is rated to the poor rate or the rate is collected from him, and also where the occupier's name is improperly omitted from the rate, and where the rate is made payable by instalments: but these provisions do not operate to save the franchise of the occupier where it depends upon the payment of the rate, unless the rate, with or without deductions made or purporting to be made under the Act of 1869, has been paid.

The owner of small tenements who compounds for rates under sect. 3 of the last-mentioned Act, is not entitled to vote as a ratepayer (see *Mogg v. Clark* (1885), 16 Q. B. D. 79; 55 L. J. Q. B. 69; 53 L. T. 890; 34 W. R. 66; 50 J. P. 342); but where he is actually rated under sect. 4 of that Act, it is a doubtful question whether he, as well as the occupier whose rights are saved as above mentioned, is not entitled to vote under the above rule and similar enactments as a ratepayer: see *Reg. v. Hampton* (1865), 6 B. & S. 923, 939; 12 Jur. (N. S.) 587; 13 L. T. 431; 15 W. R. 43; *Mogg v. Clark*, *supra*, per Lindley, L. J., 16 Q. B. D. at p. 84.

Sect. 10 of the Poor Law Amendment Act, 1867 (30 & 31 Vict. c. 106), enacts that “where any corporation aggregate, joint stock or other company, commissioners, or public trustees shall be rated, any officer of such corporation, company, commissioners, or public trustees from time to time appointed by the governing body thereof whose name shall be sent in writing to the overseers before the first day of March in any year, to be entered in the rate-book under the name of such corporation, company, commissioners, or public trustees, shall be entitled to vote in respect of the property assessed as if he were assessed in his own name.” This enactment is general in terms, but inasmuch as it occurs among a number of provisions relating to elections of guardians, it is doubtful whether it was not impliedly confined to such elections. It is repealed so far as it relates to these elections by the Local Government Act, 1894.

A person becomes a ratepayer on his name being duly entered in the current rate under sect. 47 (9) of the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), or under the provisions of the Poor Rate Account and Collection Act, 1869 (32 & 33 Vict. c. 41, s. 16), as to the rating of incoming occupiers.

A poor rate becomes due when it is made, that is, under sect. 17 of the last-mentioned Act, when it is allowed by the justices, or if the justices sever in their allowance, then on the day of the last allowance.

As to disqualifications for voting, see the observations on rule 12.

*Rule 12.* " Owners of and ratepayers in respect of property situated within the district for which the [election] is held shall be entitled to vote according to the scale following; (that is to say,) 62 & 63 Vict.  
c. 14, s. 6  
(6), n.

" If the property in respect of which the person is entitled to vote is rated to the poor rate on a rateable value of less than fifty pounds, he shall have one vote; if such rateable value amounts to fifty pounds and is less than one hundred pounds, he shall have two votes; if it amounts to one hundred pounds and is less than one hundred and fifty pounds, he shall have three votes; if it amounts to one hundred and fifty pounds and is less than two hundred pounds, he shall have four votes; if it amounts to two hundred pounds and is less than two hundred and fifty pounds, he shall have five votes; and if it amounts to or exceeds two hundred and fifty pounds, he shall have six votes."

It is not clear whether statutory provisions disqualifying persons from voting at elections, which were applicable to elections of local boards, are applicable to voting at a poll consequent on a meeting of owners and ratepayers.

It would seem, however, that the common law incapacities to vote of married women, infants, aliens, and lunatics, would apply to voting at such a poll.

Though married women are under a common law incapacity for exercising almost any franchise or right of voting, in the absence of a statutory provision enabling them to exercise such right (see *Reg. v. Harrald* (1872), L. R. 7 Q. B. 361; 41 L. J. Q. B. 173; 26 L. T. 616; 20 W. R. 328), no such incapacity appears to attach to unmarried women, and unmarried women who are owners or ratepayers may apparently vote at a poll consequent on a meeting of owners and ratepayers.

*Rule 13.* " Any person who is owner and also bonâ fide occupier of the same property shall be entitled to vote both in respect of such ownership and of such occupation."

*Rule 14.* " Owners may give their votes either personally or by proxy."

Owners and proxies desiring to vote at a poll consequent on a meeting of owners and ratepayers must send in their claims in accordance with rule 20 of the schedule now under discussion, and rule 6 of Sched. III., *ante*, p. 98.

*Rule 15.* " The instrument appointing a proxy shall be in writing under the hand of the appointor, or where the appointor is a corporation under their common seal, or where the appointor is a body of persons unincorporate under the hands of three directors or other persons having the direction or management of the undertaking or business carried on by such body of persons; and every such instrument shall be attested by a witness, and may be in the Form M in Schedule IV. to this Act."

It would appear that the appointment of a proxy will remain in force, and supersede the owner's right to vote personally, until it is expressly revoked, or otherwise terminated, as by the owner sending in a claim, under rules 20, 23, to vote personally, or ceasing to hold his qualification, or, in the case of a single woman, marrying.

Form M, with the notes thereto contained in Sched. IV. to the Act, is as follows:—

" To the Chairman of the Local Board for the District of  
This day of 18 .

I [or we], the undersigned being the owner [or owners] of the property hereinafter described which is situated in the parish of do

62 & 63 Vict.  
c. 14, s. 6  
(6), n.

hereby appoint \_\_\_\_\_ to vote as my [*or our*] proxy in all cases wherein he may lawfully do so, pursuant to the provisions of the Public Health Act, 1875. And I [*or we*] hereby state that the description of the said property is as follows; viz. (a).

\_\_\_\_\_  
Signature of owner (b).

\_\_\_\_\_  
Address of owner.

\_\_\_\_\_  
Witness.

(a) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(b) Or of three directors; or in the case of a corporation *say*, Given under our common seal, and add the name of the person or persons entitled to affix the seal.

The form will require some little modification to fit it for use in connection with voting at a poll of owners and ratepayers under the Borough Funds Act in London.

The instrument should be addressed to the mayor of the borough, and after the words "Public Health Act, 1875," the words "the Borough Funds Act, 1872, and the London Government Act, 1899," might be added. It also requires a slight modification, not provided for by the statutory notes, to fit it for use in the case of a corporation.

The appointment of a proxy is a "letter of attorney" or an "instrument of procuration" so as to require a ten shilling stamp under the Stamp Act, 1891 (54 & 55 Vict. c. 39, Sched. tit. "Letter of Attorney"): see *Reg. v. Kelk* (1840), 12 A. & E. 559.

*Rule 16.* "No member of a corporation or of any such body of persons (other than a partnership firm consisting of not more than six persons) shall be entitled to vote individually as owner in respect of property belonging to such corporation or body of persons."

*Rule 17.* "Partners in a firm consisting of not more than six persons may vote as owners in respect of property of the firm as if that property were equally divided among the partners."

*Rule 20.* "A claim by an owner or proxy [*to be entered on the register*] shall state his name and address within the district, and a description of the nature of the interest or estate in the property giving the qualification, and a statement of the amount of all rent service (if any) received or paid in respect thereof by him or the body of persons for whom he is proxy, and of the persons from whom or to whom the same is received or paid; and in the case of a proxy the claim shall be accompanied by the appointment of the proxy or an attested copy thereof."

In order to be entitled to vote at a poll of owners and ratepayers under Schedule III., an owner or proxy must send in a claim containing the particulars above mentioned to the summoning officer in pursuance of rule 6 of that schedule.

*Rule 21.* "A claim by an owner or proxy may be made by writing in the Form L. in Sched. IV. to this Act."

The forms of claim given in Sched. IV. to the Act with the notes thereto contained in that schedule, are as follows:—

#### *Owner's Claim.*

To the Chairman of the Local Board for the district of

This \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

I the undersigned claim [*to have my name inserted in the register of owners and proxies for the district of \_\_\_\_\_, pursuant to the provisions of the Public Health Act, 1875*], as owner of the property hereinafter described, which is situated in the parish of \_\_\_\_\_, that is to say: (a)

I also state that the interest or estate which I have in such property, 62 & 63 Vict. and the amount of all rent service which I receive or pay in respect thereof, c. 14, s. 6 and the names of the persons from whom I receive or to whom I pay such (6), n. rent service are set forth in the form hereunder written.

Description of property (b)	In respect of which I have the interest of (c)	And in respect of which I receive in rent service the sum of (d) *	From (e)	And in respect of which I pay in rent service the sum of f *	To (g)
		£ s. d.		£ s. d.	

\_\_\_\_ Signature of claimant.  
 \_\_\_\_\_ Address (h) of claimant.

(a) Here insert a clear statement of the property, as "house," "building," "house and acres of land."

(b) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(c) Describe the estate or interest, as *an estate in fee simple, of freehold, a term of years*, and also whether it is held by the claimant solely, or jointly with others, and in the case of a partner claiming, insert the number and names of the other partners in the firm.

(d) If the property is let by the owner, insert the amount of rent received from each tenant.

(e) Insert name of tenant or tenants.

(f) If the owner is a lessee paying rent, insert the amount of all the rent he pays.

(g) Insert the name of the lessor.

(h) This need not be the owner's residence, but should be some address within the district.

\* A partner must set out the amount of rent service which he would receive or pay if the qualifying property were equally divided among his co-partners and himself.

In the case of a poll consequent on a meeting of owners and ratepayers in London, this form will require modification. In the first place the claim should be addressed to the mayor. Secondly, the words in italics and square brackets would be inapt in such a case. Some such words as the following might be substituted: "to be entitled to vote and to have a voting paper delivered to me at any poll of owners and ratepayers held for the above-named borough of \_\_\_\_\_ in pursuance of the provisions of the Public Health Act, 1875, the Borough Funds Act, 1872, and the London Government Act, 1899."

### Claim of Proxy.

To the Chairman of the Local Board for the District of

This \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_,

I the undersigned having been appointed by \_\_\_\_\_ of \_\_\_\_\_, owner [or owners] of the property hereinafter described which is situated in the parish of \_\_\_\_\_ to vote as his [or their] proxy pursuant to the provisions of [the *Public Health Act, 1875, claim to have my name inserted in the register of owners and proxies for the district of* \_\_\_\_\_] as such proxy.

I herewith transmit to you (a) the writing under the hand [or hands, or in the case of a corporation the seal] of \_\_\_\_\_ appointing me such proxy.

I also state that the interest or estate which \_\_\_\_\_ has [or have] in such property and the amount of the rent service which he [or they] receives or pays [or pay] in respect thereof and the names of the persons

62 & 63 Vict. from whom he [or they] receives [or receive] or to whom he [or they]  
c. 14, s. 6 pays [or pay] such rent service are set forth in the form hereunder written.  
(6), n.

Description of property ( <i>b</i> )	In respect of which the appointor has an estate or interest of ( <i>c</i> )	And in respect of which the appointor receives in rent service the sum of ( <i>d</i> )	From ( <i>e</i> )	And in respect of which the appointor pays in rent service the sum of ( <i>f</i> )	To ( <i>g</i> )

——— Signature of proxy.

——— Address (*h*) of proxy.

- (*a*) If the appointment itself is not sent, insert the words "an attested copy of."  
 (*b*) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it can be identified.  
 (*c*) Describe the estate or interest, as *an estate in fee simple, of freehold, a term of years*, and whether it is held by the appointor solely or jointly with others.  
 (*d*) If the property is let by the appointor, insert the amount of rent received from each tenant.  
 (*e*) Insert the name of tenant or tenants.  
 (*f*) If the appointor is a lessee paying rent, insert the amount of all the rent he pays.  
 (*g*) Insert the name of the lessor.  
 (*h*) This need not be the proxy's address, but should be some address within the district.

In the case of a poll consequent on a meeting of owners and ratepayers in London, the claim should be addressed to the mayor, and for the words in square brackets in italics in the body of the claim such words as the following might be substituted "pursuant to the provisions of the Public Health Act, 1875, the Borough Funds Act, 1872, and the London Government Act, 1899, to be entitled to vote and to have a voting paper delivered to me at any poll of owners and ratepayers held for the above-named borough in pursuance of the provisions of the said Acts."

Rule 23.—"Claims . . . shall be sent to the chairman of the local board. . . ."

In a metropolitan borough, mayor of the borough must obviously be read for chairman of the local board.

Rule 36.—"The returning officer shall . . . [*not less than fourteen days before the last day appointed for delivery to him of nomination papers*], publish a notice, signed by him and specifying—\* \* \*

The mode of voting in case of a contest;

The day or days on which the voting papers will be delivered and the day on which they will be collected; and

The place for the examination and for the casting up of the votes;

and shall also cause copies of such notice to be affixed at the places where parochial notices are usually affixed."

There is a difficulty as to the length of notice of poll in the case of a poll consequent on a meeting of owners and ratepayers, since in such cases there is no delivery of nomination papers.

The proper course appears to be to give notice long enough to allow owners a reasonable time after the notice for sending in claims,



which under rule 6 of Sched. III. they must do at least fourteen days 62 & 63 Vict. (that is according to a well-known rule of construction, fourteen clear c. 14, s. 6 days), before the last day appointed for the delivery of the voting (6), n. papers. See *Ward v. Sheffield Corporation* (1887), 19 Q. B. D. 22; 56 L. J. Q. B. 418.

*Rule 37.*—"The returning officer may, if he thinks fit, cause to be made an alphabetical list of the persons entitled to vote [at the election]."

*Rule 38.*—"The clerk of the board of guardians of any union, and the overseers or other officers of every parish wholly or in part within the parts for which the [election] is held, and having the custody of any books or papers relating to the election of guardians of the poor, or of the poor-rate books relating to any such parish, shall permit the same to be inspected and copies or extracts to be taken therefrom by the returning officer. Any person having the custody of any such books or papers who refuses to permit the same to be inspected, or copies or extracts to be taken therefrom, shall be liable to a penalty not exceeding five pounds."

*Rule 43.*—"... the returning officer shall cause voting papers, in the Form [N.] contained in Sched. IV. to this Act, to be prepared and filled up. . . ."

The form of voting paper in the case of a poll consequent on a meeting of owners and ratepayers is Form O. in Sched. IV. That form is as follows:—

*Voting Paper No. ( ).*

At a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ in the [county] of \_\_\_\_\_ it was agreed that the following resolution should be proposed to the owners and ratepayers of \_\_\_\_\_.

*(Set out the resolution.)*

—	In favour of.	Against.	Number of Votes.	
			As Owner.	As Ratepayer.
Do you vote in favour of or against the adoption of this resolution?				

(Signed) \_\_\_\_\_

or the mark of

Witness to the mark

or proxy for

*Directions to the Voter.*

The voter must write his initials under the heading "in favour" or "against," according as he votes for or against the resolution, and must subscribe his name and address at full length.

If the voter cannot write he must make his mark instead of initials, but

62 & 63 Vict. c. 14, s. 6 (6), n. such mark must be attested by a witness, and such witness must write the initials of the voter against his mark.

If a proxy votes he must in like manner write his initials, subscribe his own name and address, and add after his signature the words "as proxy for," with the name of the body of persons for whom he is proxy.

This paper will be collected on the \_\_\_\_\_ of \_\_\_\_\_ between the hours of \_\_\_\_\_ and \_\_\_\_\_.

*Rule 44.*—"The returning officer shall, three days at least before the day of collection of the voting papers, cause one of such voting papers to be delivered, by persons appointed by him for that purpose, at the address stated in the [*register or*] claim of each owner and proxy, and at the residence within the district of each ratepayer entitled to vote therein.

According to an established rule of construction, so many days "at least" means so many clear days at least. Therefore, three days must intervene between the day when the voting paper is delivered and the day when the papers are collected; e.g., if the papers are collected on Friday, they must not be left later than the preceding Monday.

*Rule 45.*—"Each voter shall write his initials in the voting paper delivered to him . . . and shall sign such voting paper."

*Rule 46.*—"Any person voting as a proxy shall in like manner write his own initials and sign his own name, and state also in writing the name of the person or body of persons for whom he is proxy."

*Rule 47.*—"Any voter unable to write shall affix his mark at the foot of the voting paper in the presence of a witness, who shall attest and write the name of the voter against the mark, as well as the initials of such voter against [*the name of every candidate for whom the voter intends to vote*]."

*Rule 48.*—"The returning officer shall cause the voting papers to be collected on the day of collection . . . by such persons as he may appoint."

*Rule 49.*—"No voting paper shall be received or admitted unless the same has been delivered at the address or residence as aforesaid of the voter, nor unless the same is collected by the persons appointed for that purpose: Provided—

"(a.) That if any person entitled to receive a voting paper has not received a voting paper as aforesaid, he shall, on personal application before the day of collection to the returning officer, be entitled to receive a voting paper from him, and to fill up the same in his presence, and then and there to deliver the same to him:

"(b.) That if any voting paper duly delivered has not been collected, through the default of the returning officer or the persons appointed to collect the same, the voter in person may deliver the same to the returning officer before twelve o'clock at noon on the day or on the first day (as the case may be) appointed for the examination and casting up of the votes."

*Rule 51.*—"The returning officer shall on the day immediately following the day of collection of the voting papers, and on as many days immediately succeeding as may be necessary, attend at the place appointed for the examination and casting up of the votes, and ascertain the validity of the votes, by an examination of the rate books and such other books and documents as he may think necessary, and by examining such persons as he may see fit; he shall cast up such of the votes as he finds to be valid, and to have been duly given, collected,

or received, and shall ascertain the number of such votes for each *[candidate]*. . . .” 62 & 63 Vict. c. 14, s. 6

In *Reg. v. Collins* (1876), 2 Q. B. D. 30; 46 L. J. Q. B. 257; 36 (6), n. L. T. 192, the returning officer at an election of a local board had, by mistake, put down votes to one candidate which the voting papers showed had been given for another, and had omitted to reckon certain votes, and also had received as valid votes which were invalid, but as to which he had made no examination, his attention not having been called to them. It was held by the Court of Appeal, that as to the first and second classes of votes, the duty of the returning officer, viz., to cast up the votes, was merely ministerial and might be reviewed by the Court but that as to the third class he had to exercise a judicial duty, and as to this his certificate was conclusive.

This decision appears to be applicable to the duties of the summoning officer at a poll under Schedule III.

*Rule 53.*—“The returning officer shall also cause to be made a list containing [*the names of the candidates, together with (in case of a contest)*] the number of votes given for each [*and the names of the persons elected*], and shall sign and certify such list, and shall deliver the same, together with the [*nomination and*] voting papers which he has received, to the local board at their first or next meeting (as the case may be), who shall cause the same to be deposited in their office.”

*Rule 54.*—“Such list shall during office hours be open to public inspection, together with all other documents relating to the [*election*], for six months after the [*election*], without fee or reward; and the returning officer shall, as soon as may be after the completion of the [*election*], cause such list to be printed, and copies thereof to be affixed at the usual places for affixing parochial notices within the parts for which the [*election*] has taken place.”

*Rule 66.*—“Whenever the day appointed for the performance of any act in relation to any [*election*] is a Sunday, Christmas Day, or Good Friday, a Bank holiday, or any day appointed for public fast or thanksgiving, such act shall be performed on the day next following, unless it is one of the days excluded as aforesaid; and in that case on the day following such excluded day.”

*Rule 67.*—“The necessary expenses attendant on any [*election*], and such reasonable remuneration to the returning officer and other persons for services performed or expenses incurred by them in relation thereto as may be allowed by the local board, shall be paid out of the general district rates levied under this Act.”

This rule, so far as regards payment by the local authority, applies in the case of a poll consequent on a meeting of owners and ratepayers, only when the resolution is carried: see rule 8 of Sched. II., *ante*, and the observations thereon.

Rule 68 imposes penalties on the returning officer and his assistants for default in performance of their duties; and rule 69 provides penalties for fabrication of voting papers and the like. It does not seem necessary to quote these rules at length here.

*Consent of Local Government Board.*—It is the practice of the Local Government Board, before giving their approval, under the Borough Funds Act, to the incurring of expense in the promotion of, or opposition to a Bill, to require the local authority to furnish them with a copy of the Bill, a statement of the grounds of the proposed promotion or opposition, and a statutory declaration shewing that the requirements of the Act, including those relating to the consent of the owners and ratepayers, have been complied with.

62 & 63 Vict.  
c. 14, s. 7 (1).

Expenses  
incidental to  
transfer of  
powers or  
duties.

**Sect. 7.**—(1.) Where any power or duty is transferred from the London County Council to a borough council or from a borough council to the London County Council by or under this Act, the borough council or county council, as the case may be, shall defray as part of their ordinary expenses the expenses of and incidental to the power or duty, but the county council shall contribute to the borough council, or the borough council to the county council, in respect of those expenses, such amount, if any (whether capital or annual), and subject to such conditions, if any, as may—

(a) if the transfer is made by this Act, be agreed on between the councils within six months after the transfer, or in default of agreement be finally determined by the Local Government Board; and

(b) if the transfer is made by a Provisional Order, be fixed by the Order.

Provided that every borough council shall have an opportunity of making a representation to the Local Government Board as to the amount of any contribution under this section to another council, and if the amount is settled by agreement may, within three months from the date at which the agreement is notified to them, appeal against it to the Local Government Board, who may finally determine the amount.

(2.) Where the transfer is made by Provisional Order the amount of contribution from or to the county council may be varied in each case to meet the circumstances of the case.

(3.) This section shall apply as if the Common Council of the City of London were the council of a metropolitan borough.

**Note.—Transfer of Powers.**—As to the transfer of powers to which this section relates, see sect. 5.

Committees.

55 & 56 Vict.  
c. 53.  
56 & 57 Vict.  
c. 11.

**Sect. 8.**—(1.) Any committee appointed by a borough council for the purpose of the Public Libraries Acts, 1892 and 1893, may consist partly of persons not members of the council.

**Note.—Public Libraries Acts.**—As to these Acts, see the note to sect. 4 (2), *ante*.

(2.) Every committee shall report their proceedings to the council, but, to the extent to which the council

so direct, the acts and proceedings of the committee shall not require the approval of the council. Provided that a committee shall not raise money by loan or by rate, or spend any money beyond the sum allowed by the council. 62 & 63 Vict.  
c. 14, s. 8 (2).

**Note.—Committees.**—The council of a metropolitan borough will have a general power to appoint committees under sect. 58 of the Metropolis Management Act, 1855, which provides that it shall be lawful for any elective vestry “to appoint a committee or committees for any purposes which, in the discretion of the . . . vestry, would be better regulated and managed by means of such committee, and at any meeting to continue, alter, or discontinue such committee”

That section at present applies also to district boards. It is, however, expressly repealed, as from the appointed day, as regards district boards by sect. 35 (2) and Sched. III. of the present Act. And this repeal shows that the section ought to be regarded as applied to borough councils by sect. 2 (5) of the present Act, and therefore that it cannot be read as restricted to the appointment of committees for the purposes of the discharge of functions transferred from vestries and district boards by sect. 4 of the present Act.

By sect. 59 of the Act of 1855 every committee appointed under sect. 58 “may meet from time to time, and may adjourn from place to place, as they may think proper, for carrying into effect the purposes of their appointment; but no business shall be transacted at any meeting of the committee unless three members of the committee are present.”

Under sect. 202 of the Act of 1855 the council will have power to regulate the proceedings of their committees by byelaws: see *ante*, p. 69.

A proviso to sect. 58 of the Act of 1855, requiring that the acts of every committee appointed under the section should be submitted to the general body of the vestry appointing the committee for their approval, is repealed as from the appointed day by sect. 35 (2) and Sched. III. of the present Act.

Under sect. 58 of the Act of 1855, coupled with the present section, the council of a metropolitan borough will accordingly have very large powers of delegating their powers to committees. And the acts of committees in the exercise of the powers so delegated will not, unless the council so direct, require ratification by the council.

There is considerable difficulty as to the delegation of contracting powers to a committee. By sect. 149 of the Metropolis Management Act, 1855, administrative vestries and district boards are empowered to enter into contracts for the purpose of carrying that Act into execution; and it is provided that “every such contract for works or materials, whereof the value or amount exceeds ten pounds, shall be in writing or print, or partly in writing and partly in print, sealed with the seal of the board or vestry.” And it seems clear that a contract thus required to be sealed is void unless so sealed: see *Young v. Leamington Corporation* (1883), 8 App. Cas. 517; 52 L. J. Q. B. 713; 49 L. T. 1; 31 W. R. 925; 47 J. P. 660. Moreover, contracts of the council of a metropolitan borough not coming within this provision would apparently in many cases be void unless sealed under the common law doctrine requiring contracts of corporations, with various exceptions, to be under seal.

It seems almost impossible to suppose that it can be intended that

62 & 63 Vict.  
c. 14, s. 8  
(2), n.

the council of a metropolitan borough should be able to bind themselves by an unsealed contract made indirectly through a committee, when they could not bind themselves by such a contract made directly. It seems therefore clear that the power of the council to delegate contracting powers to a committee must be impliedly restricted to such contracts as do not require sealing, or that the council must be taken to have power to delegate to a committee the power of affixing the common seal of the council. There are difficulties in the way of either supposition.

In *Firth v. Staines* [1897], 2 Q. B. 70; 66 L. J. Q. B. 510; 76 L. T. 496; 45 W. R. 575; 61 J. P. 452, the meaning of the proviso to sect. 58 of the Metropolis Management Act, 1855, came in question. In that case a committee of a vestry acting under an enactment enabling the vestry to give notice to an owner of property to execute certain works, and imposing a penalty for non-compliance, caused such a notice to be served on the respondent, and, on his failure to comply with it, caused a summons for penalties to be taken out. After the summons was taken out, the vestry approved the acts of the committee. It was held that the approval of the vestry rendered the acts of the committee effectual as from the time when they were done; and Wright, J., said: "The case must be decided upon the ordinary principles of the doctrine of ratification. To constitute a valid ratification three conditions must be satisfied; first, the agent whose act is sought to be ratified must have purported to act for the principal; secondly, at the time the act was done the agent must have had a competent principal; and, thirdly, at the time of the ratification the principal must be legally capable of doing the act himself." This view, however, involves the somewhat startling proposition that the approval of the vestry rendered the conduct of the respondent criminal *ex post facto*; and, particularly as the judgments in the case do not allude to the difficulty of supposing that an act can be made criminal in this way, the decision can hardly be regarded as altogether satisfactory. The case may be of importance as regards committees of the council of a metropolitan borough, notwithstanding the repeal of the proviso to sect. 58 of the Act of 1855, in cases where the council direct that acts of a committee shall require their approval.

It seems that functions delegated to a committee, other than purely ministerial functions, must be exercised by the committee as a body and cannot be delegated by them to sub-committees. See *Cook v. Ward* (1877), 2 C. P. D. 255; 46 L. J. C. P. 554; 36 L. T. 893; 25 W. R. 593.

The delegation of powers by an authority to a committee is not, in general, equivalent to a resignation by the authority of the powers in question; but the delegated powers may be resumed by the authority at any time. See *Huth v. Clarke* (1890), 25 Q. B. D. 391; 59 L. J. M. C. 120; 63 L. T. 348; 38 W. R. 655.

(3.) Every borough council shall from time to time appoint a finance committee for regulating and controlling the finance of the council; and no order for payment of any sum, whether on account of capital or income, shall be made by a borough council except in pursuance of a resolution of the council passed on the recommendation of the finance committee; and any costs, debt, or liability exceeding fifty pounds shall not be

incurred except upon a resolution of the council passed on an estimate submitted by the finance committee. The notice of the meeting at which any resolution for the payment of any sum by the borough council (otherwise than for ordinary periodical payments) or any resolution for incurring any costs, debt, or liability exceeding fifty pounds will be proposed, shall state the amount of the said sum, costs, debt, or liability, and the purpose for which they are to be paid or incurred. Provided that the foregoing provisions shall not apply to payments made in pursuance of a precept from another authority.

**Note.—Finance Committee.—Order for Payment of Money.**—The present sub-section, and sub-sect. (1) of sect. 9, by which it is supplemented, are taken, with little but verbal alteration, from sub-sects. (1), (3), and (4) of sect. 80 of the Local Government Act, 1888, which relate to the finances of county councils.

(4.) Section fifty-seven of the Local Government Act, 1894, which relates to joint committees, shall, with the substitution of the words Local Government Board for County Council therein, apply to borough councils as if they were district councils.

**Note.—Joint Committees.**—Sect. 57 of the Local Government Act, 1894, with the exception of sub-sect. (5), which relates exclusively to parish councils, is as follows —

“(1.) A parish or district council may concur with any other parish or district council or councils in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested, and in conferring, with or without conditions or restrictions, on any such committee any powers which the appointing council might exercise if the purpose related exclusively to their own parish or district.”

“(2.) Provided that a council shall not delegate to any such committee any power to borrow money or make any rate.”

“(3.) A joint committee appointed under this section shall not hold office beyond the expiration of fourteen days after the next annual meeting of any of the councils who appointed it.”

“(4.) The costs of a joint committee under this section shall be defrayed by the councils by whom it is appointed in such proportions as they may agree upon, or as may be determined in case of difference by the county council.”

Part IV. of the 1st Schedule to the Local Government Act, 1894, contains certain rules applicable to the proceedings of committees appointed under that Act, including joint committees appointed under sect. 57. It is submitted that the rules must be taken to apply to joint committees appointed under the present sub-section, but the point is far from clear. They are as follows:

“(1.) The quorum, proceedings, and place of meeting of a committee, whether within or without the parish or district, and the area (if any) within which the committee are to exercise their authority,

62 & 63 Vict. shall be such as may be determined by regulations of the council or  
c. 14, s. 8 councils appointing the committee.”  
(4), n.

“(2.) Subject to such regulations, the quorum, proceedings, and place of meeting, whether within or without the parish or district, shall be such as the committee direct, and the chairman at any meeting of the committee shall have a second or casting vote.”

It may be pointed out that unless these rules are to be taken to apply to a joint committee of metropolitan borough councils, the chairman of such a committee, though able to vote in the first instance, will not have a second vote in case of equality of votes: see *Reg. v. Chapman* (1704), Ca. temp. Holt, 442; 6 Mod. 152; *Rex v. Ginever* (1796) 6 T. R. 732.

As to committees generally, see the note to sub-sect. (2) of the present section.

Payments to  
and by  
borough  
council.

**Sect. 9.**—(1.) All payments to and by the borough council shall be made to and by the borough treasurer, and all payments by the council shall, unless made in pursuance of the specific requirement of an Act of Parliament, or of an order of a competent court, be made in pursuance of an order of the council signed by three members of the finance committee present at the meeting of the council, and countersigned by the town clerk, and the same order may include several payments. Moreover, all cheques for payment of moneys issued in pursuance of any such order shall be countersigned by the town clerk, or by a deputy approved by the council.

**Note.—Orders for Payment of Money.**—See also as to these orders, sect. 8 (3) and the note thereto.

**Deputy Town Clerk.**—As to the appointment of a deputy town clerk, see sect. 25.

(2.) Any such order may be removed into the High Court of Justice by writ of certiorari, and may be wholly or partly disallowed or confirmed on motion and hearing with or without costs according to the judgment and discretion of the court.

**Note.—Certiorari.**—The present sub-section is similar to sect. 80 (2) of the Local Government Act, 1888, which deals with orders of county councils for the payment of money, and to sect. 141 (2) of the Municipal Corporations Act, 1882, which deals with the like orders of councils of municipal boroughs.

Apart from the present sub-section there will be two direct ways of impeaching the legality of expenditure by the council of a metropolitan borough.

In the first place the legality of expenditure of the kind may be questioned before the auditor by whom the accounts of the council will be audited, and the matter may be brought before the Queen's Bench Division on appeal by way of certiorari from his decision: see sect. 14, and the note thereto.



Secondly, the legality of expenditure or proposed expenditure may be questioned by an action in the Chancery Division in the name and c. 14, s. 9 with the consent of the Attorney-General: see, as to the principle on (2), n. which such an action will lie, *A.-G. v. Brown* (1818), 1 Swanst. 265; *A.-G. v. Eastlake* (1853), 11 Hare, 205; 2 Eq. Rep. 145; 17 Jur. 801; *A.-G. v. Brecon Corporation* (1878), 10 Ch. D. 204; 48 L. J. Ch. 153; 40 L. T. 52.

In view of these alternative remedies the present sub-section seems quite superfluous, and indeed to some extent embarrassing, since the multiplication of remedies always affords the opportunity of arguing that in a particular case the inappropriate remedy has been selected.

An order of the council of a metropolitan borough for the payment of money might be removed by certiorari under the present sub-section, though the formalities prescribed by sub-sect. (1) and sect. 8 (3) had not been complied with: see *Reg. v. Lichfield Corporation* (1843), 4 Q. B. 893; 12 L. J. Q. B. 308.

There appears to be no definite limit of time within which the rule for the certiorari must be applied for: see *Reg. v. Sheffield Corporation* (1871), L. R. 6 Q. B. 652; 40 L. J. Q. B. 247; *S. C. nom. Roberts v. Sheffield Corporation*, 24 L. T. 659; but no doubt the rule might be refused if there were undue delay in applying for it.

In *Reg. v. Vaile* (1889), 23 Q. B. D. 483; 54 J. P. 134; *S. C. nom. Reg. v. Whiteley*, 58 L. J. M. C. 164; 61 L. T. 253, members of the council of a municipal borough, who were responsible for the making of an order for the payment of money which was quashed on certiorari, were, on a special application against them, made personally liable for the costs of the proceedings. In that case there had, however, been something in the nature of an attempt to defy the Court on the part of the council.

### *Rates, Overseers, and Audit.*

**Sect. 10.**—(1.) A scheme under this Act shall provide for all the expenses of a borough council being paid out of the general rate, and for the discontinuance of a separate sewers rate and separate lighting rate, but shall make provision for protecting the interests of owners and occupiers of any hereditament which is exempt from any rate or liable to be assessed thereto at a less amount than other hereditaments. Levy of rates.

**Note.—Schemes.**—As to schemes under the present Act generally, see sect. 16 and the note thereto.

**General Rate, etc.**—As to the provisions of the present section dealing with rates generally, see the note at the end of the section.

(2.) After the appointed day the general rate and the poor rate shall be assessed, made, and levied together by the borough council as one rate, which shall be termed the general rate, and shall be assessed, made,

62 & 63 Vict.  
c. 14, s. 10  
(2).

collected, and levied, as if it were the poor rate, and all enactments applying or referring to the poor rate shall, subject to the provisions of this Act as to audit, be construed as applying or referring also to the general rate.

**Note.—Appointed Day.**—As to the appointed day, see sect. 33.

**Audit.**—The provisions of the present Act as to audit are contained in sect. 14.

**Rates.**—As to the provisions of the present section dealing with rates generally, see the note at the end of the section.

(3.) Where a borough comprises more than one parish, the amount to be raised to meet the expenses of the borough council, or other sums payable as part of those expenses, shall, subject to any provision required for the adjustment of local burdens, be divided between the parishes in proportion to their rateable value.

**Note.—Apportionment of Expenses.**—"Rateable value" is defined by sect. 34 as including "the value of Government property upon which a contribution in lieu of rates is paid."

As to the effect of the present sub-section generally, see the note at the end of the section.

(4.) Where any of the adoptive Acts, or any local or other Act, does not extend to the whole borough, any rate required to meet the expenses incurred under the Act shall, subject to the provisions of any scheme under this Act, be levied together with, and as an additional item of, the general rate over the area to which the Act extends.

**Note.—Adoptive Acts.**—As to these Acts, see the note to sect. 4 (2), *ante*, pp. 76–85.

**"Local Act."**—This expression is defined by sect. 34.

**Rates.**—It seems that the practical effect of the present section will depend very much on the provisions as to rating that will be made by schemes under the Act.

By the next section the borough council are to be the overseers of every parish within their borough, and every precept issued by any authority in London for the purpose of obtaining money, which is ultimately to be raised out of a rate within a borough (other than a precept sent to guardians by the Local Government Board, or by a body containing representatives elected by the guardians), is to be served on the council and to be executed by them.

Consequently the borough council will have the rating powers of 62 & 63 Vict. c. 14, s. 10, n. in their borough not only for their own expenses, in the strict sense, but also for the purpose of meeting precepts from other authorities.

The principal rates levied in London outside the City, under the general law, using rate as confined in meaning to rates levied directly on the ratepayers, are the poor rate, the general rate, the sewers rate, and in some parishes the lighting rate, all of which rates are, in normal cases, levied by the overseers, but in exceptional cases the power of levying the rates is in other hands.

A small part of the proceeds of the poor rate is expended by the overseers in defraying their own expenses. But the bulk of the proceeds of the rate is devoted to meeting the precepts of the board of guardians, and of the Receiver of the Metropolitan Police District.

The precepts of the guardians include (besides the sums required by the guardians to meet their expenses, and the contributions required from them towards the metropolitan common poor fund, and the expenses of the Managers of the Metropolitan Asylums District, and similar bodies) the sums required from the several parishes as county contributions towards the expenses of the London County Council.

The general rate, the sewers rate, and the lighting rate (if any), are levied under the Metropolis Management Acts to meet the expenses of the administrative vestries and district boards, including the contributions payable by those bodies out of the general rate to meet the precepts of the London School Board.

The enactments under which the three last-mentioned rates are levied are discussed at some length below. It is not within the scope of the present work to discuss the enactments under which the sums required to meet the expenses of the boards of guardians, the London County Council, and the other authorities whose expenses ultimately fall on the poor rate, are raised.

The expression "general rate" appears to be used in two, or perhaps it would be more accurate to say three, senses in the present section.

In sub-sect. (1) it appears to be used as meaning the existing general rate, which may be called for distinction the "old general rate."

Under that sub-section the "old general rate" is to be amalgamated with the sewers rate and the lighting rate, and this amalgamated general rate is to be charged with the expenses of the borough council under the present Act, and also, subject to sub-sect. (4), with their expenses under the Adoptive Acts or any local Act, in addition to the expenses with which the old general rate, the sewers rate, and the lighting rate are at present charged.

By sub-sect. (2) this amalgamated general rate is to be further amalgamated with the poor rate; and the new rate thus created, consisting of the amalgamated general rate and the poor rate, is to be termed the "general rate." The new rate thus established, which will take the place of the old general rate, the sewers rate, the lighting rate, and the poor rate, and also, in certain cases, of other special rates, may be called the "new general rate."

The new general rate will be levied in each parish in the borough by the borough council, who will be the overseers of the parish, and the law relating to the poor rate will, as provided by sub-sect. (2), apply to the rate.

62 & 63 Vict.  
c. 14, s. 10, n.

The borough council, out of the proceeds of the rate, will have to defray their own expenses, and also to meet the precepts of the boards of guardians, the London County Council, the London School Board, the Receiver of the Metropolitan Police District, and any other authority there may be, other than the authorities excepted by sect. 11 (2), with power to issue precepts that are ultimately to be met out of a rate levied in the borough.

The portions of the new general rate representing the several existing rates will, to some extent, have to be kept separate from each other in order to give effect to the provisions of the present section and other provisions in the Act. The necessary provisions for this purpose will doubtless be made by schemes; and probably a form for the general rate will be prescribed either by scheme or by order of the Local Government Board made in pursuance of their powers in that behalf.

It seems clear that sub-sect (3) does not apply to the sums the borough council will raise to meet the precepts of other authorities, and that the apportionment of the contributions towards the expenses of such other authorities is not, generally speaking, affected by the present Act.

It is difficult to see exactly what the words "or other sums payable as part of their expenses," in sub-sect. (3), refer to. Probably they have been inserted in reference to enactments, such as sect. 7 (1) of the present Act, providing that particular expenses shall be defrayed as part of the expenses of a borough council or of their predecessors.

The provision in sub-sect. (3) that the amount to be raised to meet the expenses of a borough council shall be apportioned between parishes according to rateable value is expressed to be "subject to any provision required for the adjustment of local burdens." It is far from easy to see exactly what the effect of these words will be. They will meet cases where, by a scheme under the present Act, provision is made for the incidence of rates inconsistent with the raising of expenses in different parishes in proportion to rateable values; and they will also meet cases where there is any express enactment providing that sums required to meet particular expenses of a borough council should be raised in part only of the borough or in particular proportions as between different parts of the borough. They may also be intended to keep alive the very extensive powers at present possessed by administrative vestries and district boards under the enactments discussed below, of adjusting the incidence of their expenses otherwise than according to rateable value. They might even be read, though the writer would not himself place this interpretation on them, as conferring on borough councils a general power of apportioning their expenses between parishes in such manner as they think necessary for the purpose of a proper adjustment of local burdens.

The existing law as to the levy of the old general rate, the sewers rate, and the lighting rate, may now be discussed. The principal enactments concerning these rates are contained in sects. 158-169 of the Metropolis Management Act, 1855.

Briefly the scheme of those sections is that the vestry or district board issue a precept (called in the Act an order), to the overseers of their parish, or of the several parishes in their district, distinguishing in all cases the sums required for expenses connected with sewers from those required for their general expenses; and distinguishing, in some cases, the sums required for expenses connected with lighting, as well as those connected with sewers, from those required for their general expenses. The overseers, to meet such precepts, are to levy a separate

sewers rate for the expenses connected with the sewers; a separate general rate for the general expenses: and, where the precept distinguishes lighting expenses, also a separate lighting rate for the expenses of lighting. And to these several rates, namely, the general rate, the sewers rate, and the lighting rate, respectively different incidents attach.

Sect. 158 of the Act of 1855 provides as follows:—"Every vestry and district board shall from time to time, by order under their seal, require the overseers of their parish, or of the several parishes in their district, to levy, and to pay over to the treasurer of such vestry or board, or into any bank in such order mentioned, and within the time or times thereby limited, the sums which such vestry or board may require for defraying the expenses of the execution of this Act (and such orders may be made wholly or in part in respect of expenses already incurred or of expenses to be thereafter incurred); and every such vestry and board shall distinguish in their orders sums required for defraying expenses of constructing, altering, maintaining, and cleansing the sewers, or otherwise connected with sewerage, and also, where the Lighting and Watching Act, 1833, or any other Act by virtue whereof land is rated in respect of expenses of lighting at a less amount in proportion to the annual value thereof than houses, or is wholly exempted from being rated in respect of such expenses, is in force in any parish, or any part of any parish, at the time of the passing of this Act, distinguish, as regards such parish, or part, the sums required for defraying expenses of lighting their parish or district, from sums required for defraying other expenses of executing this Act; *but every such vestry and board may cause to be raised as expenses connected with sewerage such portion of the expenses incident to the conduct of their business in relation to sewerage, in common with the conduct of their other business under this Act, as to such vestry or board may seem just.* . . ."

As to the cases in which lighting expenses are to be distinguished from other expenses, see *St. James, Westminster (Governors of Poor) v. St. Mary, Battersea, Overseers* (1859). 6 C. B. (N.S.) 878; 29 L. J. M. C. 26; 6 Jur. (N.S.) 100.

Sect. 159 of the Act of 1855, provides that "Where it appears to any vestry or district board that all or any part of the expenses, for defraying which any sum is by such vestry or board ordered to be levied as aforesaid, have or has been incurred for the special benefit of any particular part of their parish or district, or otherwise have or has not been incurred for the equal benefit of the whole of their parish or district, such vestry or board may, by any such order, direct the sum or sums necessary for defraying such expenses, or any part thereof, to be levied in such part, or exempt any part of such parish or district from the levy, or require a less rate to be levied thereon, as the circumstances of the case may require: and any such board may refrain, where any entire parish ought in their judgment to be so exempt, from issuing an order for levying any money thereon, notwithstanding they may issue an order or orders for levying sums upon any other parish or parishes in their district."

The words in italics in sect. 158, and a clause at the end of that section dealing with the receipts to be given by the overseers for rates, are expressly repealed by sect. 35 (2) and Sched. III. of the present Act. But there is no express repeal of the rest of sect. 158 nor of sect. 159.

It should be observed that there is no express provision as to the proportions in which sums required by a district board are to be

62 & 63 Vict. c. 14, s. 10, n. apportioned among the parishes. The intention, however, seems to be that the board should apportion their expenses rateably between the parishes, except so far as they think it necessary to depart from that principle of apportionment in order to give effect to sect. 159. See *St. Botolph Without Aldgate Overseers v. Whitechapel District Board* (1860), 3 E. & E. 89; 29 L. J. M. C. 228; 6 Jur. (N.S.) 1073; 2 L. T. 504; 8 W. R. 691.

Under sect. 159, the administrative vestry or district board have very wide powers of adjusting the incidence of the rates required to meet their expenditure with reference to considerations of the different amount of benefit received by different parts of their parish or district, or even practically with reference to considerations of the different extent to which different classes of property benefit by the expenditure of the rates. See *Reg. v. London, Brighton & South Coast Railway* (1879), 5 Q. B. D. 89; 49 L. J. M. C. 32; 41 L. T. 577; 28 W. R. 288, where it was held by the Court of Appeal that a district board had power to insert in their precept on a parish a provision that the rate to be levied under the precept should, as regards all such parts of the parish as consisted of land used as arable, meadow, or pasture ground only, or as woodland, orchard, market garden, hop, herb, flower, fruit, or nursery grounds, be assessed in the proportion of one fourth part only of the net annual value of such land.

It seems that the determination of the vestry or district board under sect. 159 on the questions whether expenses are incurred for the special benefit of a particular part of their parish or district, and whether expenses are incurred for the equal benefit of the whole of their parish or district, is final; so that, for example, the quarter sessions could not, on an appeal against a general rate, decide that particular premises ought to be exempt from the rate as deriving no benefit from it, if the vestry or district board had come to the conclusion that they did derive benefit from the rate. See *St. Botolph Without Aldgate Overseers v. Whitechapel District Board*, *supra*; *Reg. v. Wandsworth District Board* (1858), 6 W. R. 576; S. C. *nom. West Middlesex Waterworks Co. v. Wandsworth*, 22 J. P. 336; *Reg. v. Fitch* (1860), 24 J. P. 163; *Reg. v. Head* (1863), 3 B. & S. 419; 32 L. J. M. C. 115; 9 Jur. (N.S.) 871; 7 L. T. 708. The opinion to the contrary expressed in *Howell v. London Dock Co.* (1857), 8 E. & B. 212; 27 L. J. M. C. 177; 4 Jur. (N.S.) 205; 5 W. R. 753, seems to have been in the nature of an extra-judicial opinion, and must it is submitted be regarded as inconsistent with the other cases and incorrect.

On the other hand it seems from the cases above cited that it is the duty of the vestry or district board to act upon sect. 159 where in their judgment it applies, so that if, for instance, it could be established that they had come to the conclusion that a part of their parish or district did not benefit equally with the rest of the parish or district by expenditure out of rates, and yet had refused to exercise the powers of sect. 159 in favour of that part of the parish or district, it is possible that the rate might be successfully attacked. So possibly the rate might be attacked if it were shown that the vestry or board purporting to act under sect. 159 had taken in account considerations outside the scope of that section.

It would seem to be the intention of the present Act that the borough councils should have the powers of a vestry or district board under sect. 159 so far as regards that part of the new general rate which may be regarded as representing the old general rate, sewers rate, and lighting rate. And probably the Court would lean to this interpretation if the matter is left doubtful by the schemes under the Act.

Sect. 160 of the Act of 1855 contains provisions for cases where part of a parish is placed under the management of the vestry or board of an adjoining parish or district. It is ancillary to sect. 140 of the Act, which is repealed by the present Act, and it is difficult to see why it should not also have been repealed.

By sect. 161 of the Act of 1855 the overseers of every parish to whom any order is issued under sect. 158. are to levy the amount named therein, and for that purpose are to make rates upon their parish or the part thereof upon which any sum specified in the order is required to be levied, in respect of each sum ordered to be levied.

They are accordingly to levy firstly, a separate "sewers rate," in respect of the sum ordered to be levied for defraying expenses connected with sewers: secondly, (where a separate sum is ordered to be levied for defraying expenses of lighting) a separate "lighting rate"; and thirdly, a separate "general rate," in respect of the sums ordered to be levied for defraying the other expenses of the Act.

The section further provides, broadly speaking, for the application of the law relating to the poor rate to the levy of these rates, and contains some other provisions of minor importance which are amended by sect. 14 of the Metropolis Management Amendment Act, 1862.

The section is repealed by the present Act, and will be replaced by the provisions of the present section and of the scheme or schemes made under it.

Sect. 162 of the Act of 1855 is as follows: "All such hospitals, public schools, and other public buildings, dead walls, and void spaces of ground as are now by law rateable to any rate for the costs and charges of paving, or repairing the pavements within any parochial or other district, either separately or jointly with any other object or objects (except only places of religious worship, and burial grounds, or places which have been used for burial grounds, and are not used for any other purpose), shall be rateable under this Act to the like extent, and for the like objects or purposes as they may now be rated, and the rates to be made in respect of such objects or purposes shall be payable by the persons now liable to pay the same, and be recoverable in like manner, as any rate to which such buildings and spaces of ground are now rateable as aforesaid in respect of the like objects or purposes."

This section, the effect of which is very obscure, is repealed by the present Act. Whether it will in effect be revived by a scheme or schemes under the Act remains to be seen. It may be observed that the section was enacted at a time when a doctrine prevailed that public buildings that were not turned to profitable account were not rateable to the poor rate. This doctrine is now almost entirely exploded.

Sect. 163 of the Act of 1855 provides that: "Any sewers rate raised under this Act shall, as regards all land used as arable, meadow, or pasture ground only, or as woodland, orchard, market garden, hop, herb, flower, fruit, or nursery ground, be assessed and levied in the proportion of one fourth part only of the net annual value of such land."

This section is repealed by the present Act. But it seems clearly intended that it should be in effect revived by a scheme or schemes.

The list of partially exempted subject matters may be compared with the list of subject matters partially exempted from certain rates under the Public Health Acts (38 & 39 Vict. c. 55, ss. 211 (1, b), 230; 53 & 54 Vict. c. 17; 54 & 55 Vict. c. 33), and with the list of subject matters comprised in the definition of "agricultural land" in the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16, s. 9) and partially exempt accordingly from the poor rate and other like rates.

62 & 63 Vict.  
c. 14, s. 10, n.

In *Purser v. Worthing Local Board* (1887), 18 Q. B. D. 818; 56 L. J. M. C. 78; 35 W. R. 682; 51 J. P. 596, the premises of a market-gardener and nurseryman which were almost entirely covered by glasshouses used for growing grapes, vegetables, and flowers on prepared beds were held by the Court of Appeal to be entitled to the partial exemption enjoyed under the Public Health Acts by land used as "market gardens or nursery grounds."

On the other hand, in *Smith v. Richmond* (1899), 15 Times L. R. 523, precisely similar glass houses were held by the House of Lords, affirming a decision of a majority of the Court of Appeal, Vaughan Williams, L. J., *diss.*, not to be entitled to the partial exemption accorded to "agricultural land" by the Agricultural Rates Act, 1896, although the definition of agricultural land in that Act includes "market gardens" and "nursery grounds."

Sect. 164 of the Act of 1855 provides that where any property was at the time of the issuing of the first commission under the Metropolitan Sewers Act, 1848 (11 & 12 Vict. c. 112), "entitled to exemption from or to any reduction or allowance in respect of the sewers rate, such exemption, reduction or allowance shall be observed and allowed in levying any sewers rate under this Act."

This section is repealed by the present Act; but it appears to be intended that it should be in effect revived by a scheme or schemes.

The Act of 1848 contained power to form sewerage districts, and by sect. 76 empowered the Metropolitan Commissioners of Sewers to levy "district sewers rates" in such districts, subject to a proviso that "where in any separate sewerage district any property is by law or by the practice of the existing Commission or Commissioners of Sewers entitled to exemption, wholly or partially, from, or to any reduction or allowance in respect of the sewers rate, the commissioners shall in making the district sewers rate observe and allow such exemption, reduction, or allowance."

In *Hammersmith Bridge Co. v. Hammersmith Overseers* (1871), L. R. 6 Q. B. 230; 40 L. J. M. C. 79; 24 L. T. 267; 19 W. R. 750, the opinion was expressed that sect. 164 of the Act of 1855 should be interpreted as continuing the exemptions that existed under the Act of 1848, in other words, as in effect re-enacting the proviso to sect. 76 of that Act. The point was, however, not really in issue, and it would seem to be very arguable that sect. 164 refers to the state of things, not under the Act of 1848, but immediately prior to the coming into operation of that Act. The distinction between the two interpretations is that according to the one the exemption extends not only to property entitled to an exemption before the Act of 1848, but also to property in practice exempted, while on the other the exemption is confined to the former class of property.

There may be cases where the levying of the sewers rate before the Act of 1848 was affected by a local Act; but generally the sewers rates levied within the metropolis before that Act were levied under the old law of sewers; and the effect of sect. 164 of the Act of 1855 is, broadly speaking, to preserve with reference to sewers rates under that Act rights of exemption existing under the old law. The principle under the old law is that a sewers rate can only be assessed in respect of property benefited by the works for the purpose of which the rate is made; but that all property benefited should be assessed rateably without reference to the particular degree of benefit. See *Knight v. Langport District Drainage Board* [1898], 1 Q. B. 588; 67 L. J. Q. B. 432; 78 L. T. 260; 46 W. R. 392; 62 J. P. 245, and the cases there referred to. In London, however, the degree of



benefit may be taken into consideration under sect. 179 of the Act 62 & 63 Vict. of 1855. c. 14, s. 10, n.

Sect. 165 of the Act of 1855 is as follows:—"In every parish or part of a parish in which, at the time of the passing of this Act, the Lighting and Watching Act, 1833, is in force, the owners and occupiers of houses, buildings, and property, other than land, shall be rated to every lighting rate made under this Act at a rate in the pound three times greater than that at which the owners and occupiers of land shall be rated in such lighting rate: and in every parish or part of a parish in which, under any other Act land is now rated, in respect of expenses of lighting, at a less amount, in proportion to the annual value thereof, than houses, or is now wholly exempted from being rated in respect of such expenses, such land shall continue to be rated to every lighting rate made under this Act, at such less amount, or, where such land is now wholly exempted as aforesaid, shall be wholly exempted from such rate."

This section, again, is repealed by the present Act, but is apparently intended to be revived by a scheme or schemes.

The first clause of the section substantially repeats the provisions contained in sect. 33 of The Lighting and Watching Act, 1833 (3 & 4 Will. IV. c. 90), under which "the owners and occupiers of houses, buildings, and property (other than land) rateable to the relief of the poor . . . shall be rated at and pay a rate in the pound three times greater than that at which the owners and occupiers of land shall be rated at and pay for the purposes of this Act."

A provision in sect. 34 of that Act that "every courtyard, yard, or garden (such garden not being a market garden or nursery ground) shall be included in and make part of the assessment to be made on the house, buildings, or other property to which they may be respectively attached" is, however, not repeated.

By the Tithe Rating Act, 1851 (14 & 15 Vict. c. 50), tithes, tithe rent-charges, moduses, compositions real, and other payments in lieu of tithe are assessable under sect. 33 of the Act of 1833 as and in the same proportion of their annual value as land. This provision is, however, not repeated in sect. 165 of the Metropolis Management Act, 1855. And it seems a very doubtful question whether tithe rent-charge is rateable on the reduced scale to a lighting rate to which the first clause of that section applies.

Several cases have been decided as to the distinction between "land" and "property other than land" in sect. 33 of the Act of 1833 and similar enactments. The earlier of these cases do not seem to be based on any very intelligible principle. The two latest cases (*Thursby v. Brierclyffe-with-Extavistle Overseers* [1895], A. C. 32; 64 L. J. M. C. 66; 71 L. T. 849; 59 J. P. 180, and *Grayford Overseers v. Rutter* [1897] 1 Q. B. 650; 66 L. J. Q. B. 506; 76 L. T. 392; 45 W. R. 542; 61 J. P. 341) however seem to show that "land" in the section is used in the same sense as in the Poor Relief Act 1601 (43 Eliz. c. 2) under which the poor rate is levied, and consequently that all forms of rateable property are "land" within the Act of 1833, with the exception of houses, buildings, coal mines, tithes, and possibly also the few other classes of property, such as mines other than coal mines, that have been made rateable by subsequent legislation.

As to the preservation by sect. 165 of the Act of 1855 of exceptions from lighting rates contained in local Acts, see *The Hackney and Lamberhurst Tithe Commutation Rentcharge Cases* (1858), E. B. & E. 1, at pp. 44, 45; S. C. nom. *Reg. v. Grodchild*,

62 & 63 Vict. 27 L. J. M. C. 233; *East London Waterworks Co. v. Mile End, Old Town Overseers* (1860), 2 E. & E. 447; 29 L. J. M. C. 66; 6 Jur. (N. S.) 222; *Reg. v. Fitch* (1860), 1 L. T. 327; 24 J. P. 163.

Sect. 166 of the Act of 1855 provides for the enforcement of the precepts against the overseers. Sect. 167 provides for cases where, under a local Act, an administrative vestry themselves make the poor rate. Sect. 168 contains further provisions for cases where the overseers fail to comply with precepts. These three sections are repealed by the present Act.

Sect. 169 of the Act of 1855 provides that "As between landlord and tenant, every tenant, whether his tenancy have commenced before or after the passing of this Act, and who, if this Act had not been passed would have been entitled to deduct against or to be repaid by his landlord any sum paid by such tenant on account of the sewers rate, shall in like manner be entitled to deduct against or to be repaid by his landlord any sewers rate levied on him under this Act." This section is repealed by the present Act, but is virtually re-enacted in sect. 12. The effect of the section and sect. 12 taken together is to keep alive the rights of tenants as against their landlords in respect of the sewers rate under the old law of sewers. As to such rights see *Palmer v. Earith* (1845), 14 M. & W. 428; 14 L. J. Ex. 256; *Smith v. Humble* (1854), 15 C. B. 321; 3 C. L. R. 225.

It may be added that though the sewers rate and lighting rate do not come within the operation of the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), the general rate in most cases does come within that Act, and "agricultural land" is accordingly relieved to the extent of one half from the burden of the rate. A very difficult question might, however, arise as to the applicability of the Act when such an order had been made with reference to the rate as in *Reg. v. London Brighton and South Coast Railway*, *ante*, p. 118.

Provisions as to overseers and collection of rates.

**Sect. 11.—**(1.) After the appointed day the council of each borough shall be the overseers of every parish within their borough, and shall appoint such officers as may be required to assist in the transaction of the business, and shall defray the expenses of and incidental to the performance of the duties, of overseers. Provided that the town clerk of each borough shall have the powers and duties and be subject to the liabilities of overseers with respect to the preparation of lists of voters and of jury lists in the borough, and any document required to be signed by overseers may be signed by the town clerk.

**Note.—Borough Council to be Overseers.**—The present sub-section is supplemented by sub-sects. (3) and (4) of sect. 23, which provide that the churchwardens of parishes in metropolitan boroughs shall cease to be overseers, and contains provisions as to property vested in the churchwardens and overseers, or in the overseers, and as to cases where the overseers are trustees of a charity.

By sect. 30 any assistant overseers, rate collectors, and other officers employed in the performance of duties of overseers within a metropolitan borough are to be transferred to and become officers of

the council of the borough. As to such existing officers, and as to 62 & 63-Vict. the appointment of officers to assist in the transaction of the business c. 14, s. 11 of overseers under the present sub-section, see the note to that (1), n. section.

**Preparation of Lists of Voters.**—By sect. 4 (1) of the present Act it is provided that the clerk of the council of a metropolitan borough shall be called the town clerk, and shall be the town clerk within the meaning of the Acts relating to the registration of electors.

By sect. 27 (2) an Order in Council may be made for adapting the enactments relating to the registration of electors to the provisions of the present Act with respect to the duty of the town clerk and overseers.

It is not within the scope of this work to discuss these enactments, which are of immense complexity.

**Jury Lists.**—The preparation of jury lists is regulated by the Juries Acts, 1825, 1862, and 1870 (6 Geo. IV. c. 50; 25 & 26 Vict. c. 107; 33 & 34 Vict. c. 77). Under these Acts it is the duty of the overseers annually to make out and publish lists of persons qualified to serve on juries. The lists are subsequently revised by the justices at special sessions held for the purpose.

(2.) After the appointed day every precept issued by any authority in London for the purpose of obtaining money which is ultimately to be raised out of a rate within a borough, other than a precept sent to guardians by the Local Government Board or by a body containing representatives elected by the guardians, shall be sent to the council at their office, addressed to the council or to the town clerk. Any such precept, if so sent and addressed, shall be deemed to be personally served on the council, and shall be executed by them. "Precept" in this section includes any order, certificate, warrant, or other document of a like character, and the Local Government Board may settle the form of any precept as so defined.

**Note.—Precepts.**—The chief authorities in London whose precepts will, under the present section, be served on the borough councils are: the Receiver of the Metropolitan Police District; the London County Council; the London School Board; and the several boards of guardians. It is not within the scope of the present work to discuss the enactments under which these authorities have power to raise money.

The saving with regard to precepts sent to guardians by the Local Government Board and bodies containing representatives elected by the guardians will apply to the precepts issued by the Local Government Board for contributions to the metropolitan common poor fund and to the precepts issued by the Managers of the Metropolitan Asylums District and the managers of the several sick asylum districts and school districts.

62 & 63 Vict.  
c. 14, s. 11  
(3).

(3.) After the appointed day all the rates collected in a metropolitan borough from any person by the council shall, as far as is practicable, be levied on one demand note, and the demand note shall be in a form approved by the Local Government Board, and shall state in manner provided in that form—

- (a) the rateable value of the premises in respect of which the rate is levied; and
- (b) the rate in the pound; and
- (c) the period for which the rate is made; and
- (d) the several purposes for which the rate is levied; and
- (e) the approximate amount in the pound required for each purpose (including, as far as is practicable, the proportionate amount of the estimated costs of and loss in collection); and
- (f) any matter required by section two of the London (Equalisation of Rates) Act, 1894, or any other enactment, to be stated in the demand note.

57 & 58 Vict.  
c. 53.

Incidence of  
sewers rate  
or its  
equivalent.

**Sect. 12.** As between landlord and tenant every tenant who, if this Act had not been passed, would have been entitled to deduct against or to be repaid by his landlord any sum paid by the tenant on account of the sewers rate, shall in like manner be entitled to deduct against or to be repaid by his landlord such portion of the general rate as represents the sewers rate.

**Note.—Sewers Rate.**—As to the rates mentioned in this section, see the note to sect. 10, *ante*, pp. 114-122, and as to the present section, which virtually re-enacts sect. 169 of the Metropolis Management Act, 1855, see particularly p. 122.

Assessment  
Committees.

32 & 33 Vict.  
c. 67.

**Sect. 13.** Where the whole of a poor law union is within one borough, the assessment committee shall, notwithstanding anything in section five of the Valuation (Metropolis) Act, 1869, be appointed by the borough council instead of by the board of guardians, and, where the borough comprises the whole of two or more unions, the council shall appoint only one assessment committee for those unions, and where the council appoint the assessment committee the town clerk shall act as the clerk to that committee.

**Note.—Assessment Committee.**—At present the assessment committees in London are, in some cases, appointed by the vestry, in other cases by the board of guardians; see sect. 2 of the

Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), and 62 & 63 Vict. sect. 5 of the Valuation Metropolis Act, 1869 (32 & 33 Vict. c. 67). c. 14, s. 13, n.

The present section provides that the assessment committee shall be appointed by the borough council in certain cases, "instead of by the board of guardians." Consequently the present section applies to the appointment of the assessment committee in those cases only where that committee is at present appointed by the guardians.

It should be mentioned that by sect. 16 (2) of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), the expression "poor law union" means any parish or union of parishes for which there is a separate board of guardians.

Where the vestry at present appoint the assessment committee, the borough council will, subject to the provisions of any scheme under the Act, appoint the assessment committee, not under the present section, but as successors of the vestry under sect. 4 (1).

An assessment committee appointed by guardians is to consist of not less than six nor more than twelve persons appointed from among the guardians (25 & 26 Vict. c. 103, s. 2, repealed as to *ex officio* guardians by the Local Government Act, 1894). It is clear, however, from the provision that where a metropolitan borough comprises the whole of two or more unions, there shall be only one assessment committee, that the borough council are not required to appoint the assessment committee from among the guardians. And it is probably intended that the council should appoint the committee from among their own members. There is, however, no express provision to that effect, and it is arguable that the council will be free to appoint as members of the committee persons who are not members of the council.

Where an assessment committee is appointed by the vestry, it is provided by sect. 5 of the Valuation (Metropolis) Act, 1869, that the provisions of that Act and the Acts incorporated therewith (*i.e.*, the Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), and the Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), shall "be construed, so far as is consistent with the tenor thereof, as if the terms vestry, members of the vestry, vestry clerk, assistant vestry clerk, and monies applicable to the payment of the expenses of a vestry under the Metropolis Management Act, 1855, were respectively substituted for the terms board of guardians, guardians, clerk of the board of guardians, assistant clerk of the board of guardians, and common fund." And this provision will apply, with the necessary modifications, where the assessment committee is appointed by a borough council as successors of a vestry.

There are, however, no corresponding provisions applicable to cases where the assessment committee is appointed by a borough council under the present section. And it seems, therefore, that the powers and duties of the guardians in relation to a committee so appointed will remain unaffected by the present Act.

Thus it appears, for example, that the expenses of an assessment committee appointed by a borough council under the present section, will be defrayed by the guardians out of their common fund (see 25 & 26 Vict. c. 103, ss. 37, 38); that the consent of the guardians will be necessary to enable the committee to employ a paid valuer (see *Ib.*, s. 20; 32 & 33 Vict. c. 67, s. 61); and that the consent of the guardians will be necessary to enable them to appear as respondents on an appeal against the new general rate (see 27 & 28 Vict. c. 39, s. 2).

Provision for the payment of compensation to the clerk to the

62 & 63 Vict. board of guardians for the loss he will sustain through ceasing to act  
 c. 14, s. 13, n. as clerk to the assessment committee, may be made by scheme under  
 sect. 30 (4) of the present Act.

Audit of  
 accounts.

**Sect. 14.** After the appointed day the accounts of the council of every metropolitan borough, and of any committee appointed by the council, and of their officers, including the accounts relating to the making, levy, and collection of any rate made by the council, shall be made up and audited in like manner and subject to the same provisions as the accounts of the London County Council, and the enactments relating to the audit of those accounts and to all matters incidental thereto and consequential thereon, including the penal provisions, shall apply accordingly.

**Note.—Accounts and Audit.**—The provisions as to the making up and audit of the accounts of the London County Council, which are applied by the present section to the accounts of the council of a metropolitan borough, and of their officers, etc., are contained in sect. 71 of the Local Government Act, 1888, and the enactments thereby applied to the accounts of county councils.

Before referring to that section and those enactments, which are in a very complicated condition, it may be useful to state their effect as applied to the council of a metropolitan borough shortly, in very general language.

In the first place the accounts of the council will have to be made up to the end of each local financial year (that is, the year ending March 31st). And the Local Government Board will have power to prescribe the form in which the accounts shall be kept.

Secondly, it appears, though this point is doubtful, that certain provisions of the Municipal Corporations Act, 1882, as to returns to the Local Government Board in relation to the accounts, the publication of an abstract of the accounts, and the inspection of the accounts and the abstract, will apply to the accounts of the council.

Lastly, the accounts will be subject to audit by district auditors appointed by the Local Government Board, and the enactments that regulate the audit of the accounts of urban authorities will apply in connection with the audit.

Without touching upon all the provisions of these enactments, which are set out at length below, the following points may be mentioned.

It will be the duty of the auditor, besides charging against the responsible person any deficiency or loss caused by negligence or misconduct, and any sum that ought to have been, but has not been, brought into account, to disallow any item of account contrary to law, and to surcharge the same on the person making or authorising the making of the illegal payment. And the auditor is required in every such case to certify the amount due from the person in question (See 38 & 39 Vict. c. 55, s. 247 (7) *post*, p. 130).

It will be seen, therefore, that it is the auditor's duty to protect the ratepayers not only against embezzlement and the like, but also against expenditure out of the rates upon any unauthorised purposes.

The powers of the council of a metropolitan borough to spend

money will of course be limited to such purposes as are authorised expressly or by implication by statute. 62 & 63 Vict. c. 14, s. 14, n.

In this connection it may be well to point out that the authorities to whose functions the councils of metropolitan boroughs will succeed must doubtless, in many cases, owing to the comparatively ineffectual character of the provisions for auditing their accounts, have been accustomed to incur expenditure that cannot be justified, and that it must not be assumed that the council of a metropolitan borough have power to incur expenditure on particular purposes merely because their predecessors may have been in the habit of expending money on those purposes without any objection having been raised.

If a sum certified by the auditor to be due from any person is not paid within a given time, it becomes the duty of the auditor himself to take proceedings for the recovery of that sum (See 37 & 38 Vict. c. 55, s. 247 (9), *post*, p. 131).

The stringency of the provisions as to audit is to some extent mitigated in two ways.

In the first place an appeal lies to the Local Government Board from the decision of the auditor, and the Board have power, in the event of an appeal against any disallowance or surcharge made by the auditor, to remit the disallowance or surcharge on equitable grounds, though it may have been lawfully made (See 11 & 12 Vict. c. 91, s. 4, *post*, p. 134). And the Board constantly exercise this power so as to relieve members and officers of local authorities from personal liability for errors committed in good faith.

Secondly the Local Authorities (Expenses) Act, 1887 (50 & 51 Vict. c. 72), provides that the expenses paid by any local authority whose expenses are subject to audit by a district auditor shall not be disallowed by that auditor if they have been sanctioned by the Local Government Board. This Act practically enables the Local Government Board to authorise expenditure out of rates for purposes which would not otherwise be justifiable. The Board, however, it is understood, do not regard the Act as justifying them in permitting expenditure, otherwise unauthorised, of a recurrent character.

The enactments dealing with the making up of accounts and audit that will apply to the accounts of the council of a metropolitan borough may now be discussed in detail.

Sect. 71 of the Local Government Act, 1888, which it may be observed applies not only to the London County Council, but to the accounts of county councils generally, provides as follows:—

“(1.) The accounts of the receipts and expenditure of county councils shall be made up to the end of each local financial year as defined by this Act, and be in the form for the time being prescribed by the Local Government Board.

“(2.) The provisions of the Municipal Corporations Act, 1882, with respect to the return to the Local Government Board of the accounts of a council of a borough, and to the accounts of the treasurer of the borough, and to the inspection and abstract thereof shall apply to the accounts of a county council, and of the treasurer and officers of such council, and the said provisions respecting the return to the Local Government Board shall extend to the return to that Board of a printed copy of the abstract of the said accounts.

“(3.) The accounts of a county council and of the county treasurer and officers of such council, shall be audited by the district auditors appointed by the Local Government Board in like manner as accounts of an urban authority and their officers under sects. 247 and 250 of the Public Health Act, 1875, and those sections

62 & 63 Vict. and all enactments amending them or applying to audit by district auditors, including the enactments imposing penalties and providing for the recovery of sums, shall apply in like manner as if, so far as they relate to an audit of the accounts of an urban authority and the officers of such authority, they were herein re-enacted with the necessary modifications, and accordingly all ratepayers and owners of property in the county shall have the like rights, and there shall be the same appeal as in the case of such audit. Provided that the first schedule to the District Auditors Act, 1879, shall be modified in manner described in the second schedule to this Act."

**Making up, Form, &c., of Accounts.**—The "local financial year" to the end of which the accounts are to be made up under sub-sect. (1) of the above section is by sect. 73 of the Local Government Act, 1888, the twelve months ending March 31st.

The Local Government Board will have power to prescribe the form in which the accounts of the councils of metropolitan boroughs are to be kept not only under sect. 71 (1) of the Act of 1888 above quoted, but also under sect. 5 of the District Auditors Act, 1879, quoted *post*, p. 132, which is in somewhat wider terms in this respect.

The Local Government Board, it may be mentioned, though they have at different times prescribed with great particularity the forms in which the accounts of various local authorities are to be kept, have in the case of county councils and in the case of district councils restricted themselves to prescribing the form of financial statement to be submitted to the auditor, and have left the other accounts to be kept in such form as the council might see fit.

**Returns, Abstract, and Inspection.**—Whether sub-sect. (2) of sect. 71 of the Local Government Act, 1888, is to be regarded as applied in connection with the accounts of the council of a metropolitan borough by the present section, seems a very doubtful question.

The provisions of the Municipal Corporations Act, 1882, referred to in that sub-section appear to be as follows<sup>1</sup>:—

Sect. 27. "(2.) After the audit of the accounts for the second half of each financial year the treasurer shall print a full abstract of his accounts for that year."<sup>2</sup>

Sect. 28. "(1.) The town clerk shall make a return to the Local Government Board of the receipts and expenditure of the municipal corporation for each financial year.

"(2.) The return shall be made for the financial year ending on the twenty-fifth of March, or on such other day as the Local Government Board, on the application of the council, from time to time prescribe.

"(3.) The return shall be in such form and contain such particulars as the Local Government Board from time to time direct.

"(4.) The return shall be sent to the Local Government Board

(1) In addition to the clauses quoted, sects. 26 & 27 (1) apply to the accounts of the treasurer of a municipal borough; but they have clearly no application in the case of a county council, as they are inconsistent with the provisions of sub-sects. (1) & (3) of sect. 71 of the Act of 1888.

(2) In the case of the accounts of the treasurer of a municipal borough the audit is half-yearly, which explains the reference in the sub-section to the audit of the accounts for the second half of each financial year. In the case of a county council, the audit is annual only, and the words referring to the second half of the financial year have of course no applicability.



within one month after the completion of the audit for the second half of each financial year. 62 & 63 Vict.  
c. 14, s. 14, n.

“(5.) If the town clerk fails to make any return required under this section, he shall for each offence be liable to a fine not exceeding twenty pounds to be recovered by action on behalf of the Crown in the High Court.

“(6.) The Local Government Board shall in each year prepare an abstract of the returns made in pursuance of this section, under general heads, and it shall be laid before both Houses of Parliament.”

Sect. 233. “(3.) The treasurer’s accounts shall be open to the inspection of the council, and a member of the council may make a copy thereof or take an abstract therefrom.

“(4.) The abstract of the treasurer’s accounts shall be open to the inspection of all the ratepayers of the borough, and copies thereof shall be delivered to a ratepayer on payment of a reasonable price for each copy.

\* \* \* \*

“(6.) A document directed by this Act to be open to inspection shall be so open at any reasonable time during the ordinary hours of business, and without payment, unless it is otherwise expressed.

“(7.) If a person having the custody of any document in this section mentioned—

“(a.) obstructs any person authorised to inspect the same in making such inspection thereof as in this section mentioned; or

“(b.) refuses to give copies or extracts to any person entitled to obtain the same under this section;

he shall, on summary conviction, be liable to a fine not exceeding five pounds.

**Audit.**—Sects. 247 & 250 of the Public Health Act, 1875, which are applied to the audit of the accounts of county councils by Sect. 71 (3) of the Local Government Act, 1888, and will consequently apply to the audit of the accounts of the council of a metropolitan borough and their officers, etc., are as follows:—

Sect. 247.—“Where an urban authority are not the council of a borough the following regulations with respect to audit shall be observed: (namely.)

“(1.) The accounts of the receipts and expenditure under this Act of such authority shall be audited and examined once in every year, as soon as can be after the twenty-fifth day of March, by the auditor of accounts relating to the relief of the poor \* \* \*.

“(2.) \* \* \*.

“(3.) Before each audit such authority shall, after receiving from the auditor the requisite appointment, give at least fourteen days notice of the time and place at which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever:

“(4.) A copy of the accounts duly made up and balanced, together with all rate books account books deeds contracts accounts vouchers and receipts mentioned or referred to in such accounts, shall be deposited in the office of such

62 & 63 Vict.  
c. 14, s. 14, n.

authority, and be open, during office hours thereat, to the inspection of all persons interested for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds:

- “(5.) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books deeds contracts accounts vouchers receipts and other documents and papers which he may deem necessary, and may require any person holding or accountable for any such books deeds contracts accounts vouchers receipts documents or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same; and if any such person neglects or refuses so to do, or to produce any such books deeds contracts accounts vouchers receipts documents or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury:
- “(6.) Any ratepayer or owner of property in the district may be present at the audit, and may make any objection to such accounts before the auditor; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have by law against disallowances:
- “(7.) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorising the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made:
- “(8.) Any person aggrieved by disallowance made may apply to the Court of Queen's Bench for a writ of certiorari to remove the disallowance into the said court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor; and the said court shall have the same powers with respect to allowances disallowances and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors; or in lieu of such application any person so aggrieved may appeal to the Local Government Board, which Board shall have the same powers in

the case of the appeal as it possesses in the case of appeals 62 & 63 Vict. against allowances disallowances and surcharges by the c. 14, s. 14, n. said Poor Law auditors:

“(9.) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified unless there is an appeal against the decision; and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person:

“(10.) Within fourteen days after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in the district.”

\* \* \* \* \*

Sect. 250. “The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers incidents and consequences as in the case of such last-mentioned accounts.”

The words omitted at the end of sect. 247 related to the accounts of improvement commissioners and have no application to the accounts of county councils or of the councils of metropolitan boroughs.

The omitted portion of sub-sect. (1) and sub-sect. (2) of sect. 247 prescribed the auditor by whom the accounts were to be audited, and provided for his remuneration. They were repealed by the District Auditors Act, 1879 (42 Vict. c. 6), by which these matters are now regulated.

That Act provides that the salaries or remuneration and expenses of district auditors shall be paid out of moneys provided by Parliament, and that for the purpose of contributing to the amount required for the payment of such salaries, remuneration, and expenses, there shall be charged on every local authority, whose accounts are audited by a district auditor, a stamp duty according to a certain scale, and that such duty shall be levied by a stamp on the certificate, which the auditor is required to give under sect. 3 of the Act (*ib.* s. 2). The Act further provides for the appointment of district auditors and their assistants by the Local Government Board, enables that Board to assign the auditors their duties and the districts for which they are to act, and contains the following provisions, which must be quoted at length:—

Sect. 3. “Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit held in pursuance of section six of the Poor Law Amendment Act, 1866) a financial statement in duplicate in the prescribed form and containing the prescribed particulars; one

62 & 63 Vict. of such duplicates shall have the stamp charged under this Act affixed  
 c. 14, s. 14, n. thereon, and the auditor at the conclusion of the audit shall cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement.

“He shall forthwith send the duplicate so stamped and certified by him to the Local Government Board; and in such case a return of the receipts or expenditure comprised in such statement need not, unless the Local Government Board so require, be sent to the Board in pursuance of the Local Taxation Returns Acts, 1860 and 1877.”

Sect. 5. “Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited by a district auditor, the Local Government Board may from time to time by order make, and when made revoke and vary, such regulations as seem to the Board necessary or proper respecting the audit of such accounts, including the form of keeping the accounts of the local authority and their officers, the day or days to which the accounts are to be made up, the time within which they are to be examined by the local authority, the mode in which, if it is so prescribed, they are to be certified by the local authority or any officer of that authority, the mode of publishing the time and place of holding the audit, the persons by whom such accounts are to be produced for audit, and the mode of conducting the audit, and an order under this section shall be deemed to be an order within the meaning of section ninety-eight of the Poor Law Amendment Act, 1834.

Sect. 6. “The duties charged under this Act shall be deemed to be stamp duties under the management of the Commissioners of Inland Revenue, and all the Acts relating to stamp duties, particularly those relating to forgery, fraudulent dies, and other offences in connexion with stamp duties, shall apply accordingly; and such duties may, if the Commissioners so direct, be denoted by adhesive stamps, to be cancelled by the auditor as provided by this Act.

Sect. 7. “If a local authority fail to comply with the provisions of this Act with respect to a financial statement, such local authority, or if a clerk to the local authority is appointed, that clerk, and if no clerk is appointed, but there is a treasurer or other officer keeping the accounts which should be comprised in such financial statement, that treasurer or other officer shall be liable to a fine not exceeding twenty pounds for each offence, to be recovered by action on behalf of Her Majesty in the High Court.

Sect. 8. “In this Act,—

The expression ‘local rate’ means the poor rate, the general district rate, and every rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of a poundage assessment of the value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined.

The expression ‘local authority’ means any person or body of persons who receive and expend any local rate, but does not include overseers of the poor.

The expression ‘prescribed’ means prescribed from time to time by the Local Government Board, \* \* \*

The scale of stamp duties payable under the Act, in the case of most local authorities, is as follows :—

c. 14, s. 14, n.

Where the total of the expenditure comprised in the financial statement is	The sum shall be
Under £20 . . . . .	5s.
£20 and under £50 . . . . .	10s.
£50 and under £100 . . . . .	£1
£100 and under £500 . . . . .	£2
£500 and under £1000 . . . . .	£3
£1000 and under £2500 . . . . .	£4
£2500 and under £5000 . . . . .	£5
£5000 and under £10,000 . . . . .	£10
£10,000 and under £20,000 . . . . .	£15
£20,000 and under £50,000 . . . . .	£20
£50,000 and under £100,000 . . . . .	£30
£100,000 and upwards . . . . .	£50

For the purpose of this schedule the expenditure comprised in the financial statement shall be exclusive of any sum paid to another local authority in pursuance of a precept.

In the case of the accounts of county councils, and consequently in the case of the accounts of the council of a metropolitan borough, this scale is, however, modified by the last words of sect. 71 of the Local Government Act, 1888, quoted above, and the schedule there referred to; and in the case of these accounts the stamp duty on expenditure amounting to £150,000 and under £200,000 is £60, with an additional duty of £15 for each additional £50,000 or part thereof above £200,000.

*Appeal against Auditor's Decision.*—The provisions of the Acts relating to the relief of the poor with regard to the removal of an auditor's allowance or disallowance by *certiorari* are as follows:—

Sect. 35 of the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), enacts that "It shall be lawful for every person aggrieved by such allowance, and for every person aggrieved by such disallowance or surcharge, if such last-mentioned person have first paid or delivered over to any person authorized to receive the same all such money, goods, and chattels as are admitted by his account to be due from him or remaining in his hands, to apply to the Court of Queen's Bench for a writ of *certiorari* to remove into the said Court the said allowance, disallowance, or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of *certiorari* for the removal of orders of justices of the peace, except that the condition of such (*sic*) recognizance shall be, to prosecute such *certiorari*, at the costs and charges of such person, without any wilful or affected delay, and if such allowance, disallowance, or surcharge be confirmed, to pay to such auditor or his successor, within one month after the same may be confirmed, his full costs and charges, to be taxed according to the course of the said Court, and except that the notice of the intended application, which shall contain a statement of the matter complained of, shall be given to such auditor or his successor, who shall in return to such writ return a copy under his hand of the entry or entries in such book of account to which such notice shall refer, and shall appear before the said Court, and defend

62 & 63 Vict. c. 14, s. 14, n. the allowance, disallowance, or surcharge so impeached in the said Court, and shall be reimbursed all such costs and charges as he may incur in such defence out of the poor-rates of the union or parish respectively interested in the decision of the question, unless the said Court make any order to the contrary: and on the removal of such allowance, disallowance, or surcharge the said Court shall decide the particular matter of complaint set forth in such statement, and no other; and if it appear to such Court that the decision of the said auditor was erroneous, they shall, by rule of the Court, order such sum of money as may have been improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same; and they may also, if they see fit, by rule of the Court, order the costs of the person prosecuting such *certiorari* to be paid by the parish or union to which such accounts relate, as to such Court may seem fit; which rules of Court respectively shall be enforced in like manner as other rules of the said Court are enforceable."

Sect. 38 of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), quoted *post*, p. 135, enables the Court, in the case of an appeal as to a joint account, to reverse the auditor's decision with regard to one or more of the persons appealing without discharging the other person or persons against whom the decision was pronounced.

The issue of a *certiorari* for the removal of justices' orders is now regulated by the Crown Office Rules. These rules, among other things, provide (by Rule 33) that no writ of *certiorari* shall be granted, issued, or allowed to remove any order made by any justice or justices, unless such writ be applied for within six calendar months next after the order shall be made, and unless it be proved by affidavit that the party suing for the same has given six days notice thereof in writing to the justice or justices, or to two of them, by whom such order shall be made.

It has been decided that the High Court has jurisdiction to review the auditor's decision where it is erroneous in any sense, and not only where it is erroneous in point of law (*Reg. v. Haslehurst* (1887) 51 J. P. 645); and, on the other hand, that the Court will not reverse the decision of the auditor where there was evidence before him upon which he might reasonably have come to that decision (*Reg. v. Knott* (1866) 15 L. T. 291; and see *Reg. v. Great Western Railway* (1849) 13 Q. B. 327; 18 L. J. M. C. 145; 13 Jur. 652; *Reg. v. Street* (1852) 18 Q. B. 682; 22 L. J. M. C. 29; 16 Jur. 1085).

*Appeal to Local Government Board.*—The right of appeal to the Local Government Board is given by sect. 36 of the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), which provides that "it shall be lawful for any person aggrieved . . . by any allowance, disallowance, or surcharge . . . to apply to the said commissioners [now the Local Government Board] to inquire into and to decide upon the lawfulness of the reasons stated by the auditor for such allowance, disallowance, or surcharge, and it shall thereupon be lawful for the said commissioners to issue such order therein . . . as they may deem requisite for determining the question."

Sect. 4 of the Poor Law Audit Act, 1848 (11 & 12 Vict. c. 91) provides that "where any appeal shall be made to the said commissioners [now the Local Government Board] against any allowance, disallowance, or surcharge made by any auditor . . . it shall be lawful for the said commissioners to decide the same according to the merits of the case; and if they shall find that any disallowance or sur-

charge shall have been or shall be lawfully made, but that the subject-matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, they may [by an order under their seal<sup>1</sup>] direct that the same shall be remitted, upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge."

Sect. 38 of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), provides that "when an auditor shall have allowed, disallowed, or surcharged a sum in any account rendered to him jointly, and an appeal shall be made against the same, the decision of the auditor may be reversed by the Court or the Local Government Board, as the case may be, and the disallowance or surcharge may be remitted by the said Board in favour of one or more of the persons appealing only without discharging the other person or persons against whom such decision of the auditor was pronounced."

*Recovery of Certified Sums.*—By sect. 11 of the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43) it is enacted that "the payment of any sum certified by a district auditor to be due in accordance with the Poor Law Amendment Act, 1844, and the Acts amending the same, or with any other Act may, together with the costs of the proceedings for the recovery thereof, be enforced in like manner as if it were a sum due in respect of the poor rate."

Sect. 9 of the Poor Law Amendment Act, 1849 (12 & 13 Vict. c. 103) provides that the limitation of time for proceedings before justices imposed by sect. 11 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43) shall not apply to any proceeding for the recovery of sums certified to be due by an auditor, but that "no auditor shall commence any such proceeding after the lapse of nine calendar months from the disallowance or surcharge by such auditor, or, in the event of an application by way of appeal against the same to the Court of Queen's Bench or to the Poor Law Board [now the Local Government Board], after the lapse of nine calendar months from the determination thereupon."

There seems to be no limitation of time with regard to the recovery of a poor rate, unless perhaps under the Real Property Limitation Acts, and it is open to argument whether the limitation imposed on proceedings by an auditor under the Poor Law Amendment Act, 1849, applies where proceedings are taken under the Summary Jurisdiction Act, 1884. When the Act of 1849 was passed, sums certified by an auditor to be due were recoverable under the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101, s. 32), in the same way that penalties are recoverable under the Poor Law Amendment Act, 1834 (4 & 5 Will. IV. c. 76, s. 99). The two last-mentioned enactments are, it should be mentioned, not repealed, and might apparently still be acted upon.

The Poor Law Audit Act, 1848 (11 & 12 Vict. c. 91), contains certain provisions relating to the audit of poor rate accounts, which seem, to some extent at all events, to be applied by subsect. (9) of sect. 247 of the Public Health Act, 1875, with the necessary modifications, to the recovery of sums certified to be due under that section.

By sect. 7 of the Act of 1848 the auditor is required to give notice

(1) The necessity for an order under seal was removed by sect. 5 of the Poor Law Amendment Act, 1866 (29 & 30 Vict. c. 113), now repealed by the Statute Law Revision Act, 1893, but not so as to revive the necessity for a sealed order.

62 & 63 Vict. c. 14, s. 14, n. of an audit of poor law accounts by an advertisement in a newspaper, and it is provided that the production of a copy of such newspaper shall in all events and for all purposes be deemed sufficient evidence of the notice of the audit; and "except where a party, not being an officer bound to account to the auditor, shall be surcharged by such auditor, it shall not be necessary to prove that the audit of any accounts was adjourned, and that notice of such adjourned audit was given."

Sect. 8 of the same Act contains provisions securing that any person to whom notice of the audit is not required to be given shall have an opportunity of being heard in his defence before he is surcharged by the auditor.

Sect. 9 of the same Act provides that "in any proceedings to be taken by an auditor, or by his attorney, before justices, to recover sums certified by him to be due, it shall be sufficient for him to produce a certificate of his appointment under the seal of the Poor Law Commissioners, or of the commissioners aforesaid, and to state and prove that the audit was held, that the certificate was made in the book of account of the union or parish to which the same relates, and that the sum certified to be due had not been paid to the treasurer of the guardians of the union or of the parish, as the case may require, within seven days after the same had been so certified, nor within three clear days before the laying of the information, of which non-payment a certificate in writing purporting to be signed by the treasurer, shall be sufficient proof on the part of the auditor; and if at the hearing of such information it shall be proved that the said sum had been paid to the treasurer subsequently to the date of such last-mentioned certificate, the costs incurred by such auditor shall be paid by the party against whom the information shall be laid, unless he prove that notice of such payment had been given to the auditor twenty-four hours at least prior to the laying of the information."

The justices to whom application to enforce an auditor's surcharge is made cannot go behind the auditor's decision (*Reg. v. Linford* (1857), 7 E. & B. 950; *Reg. v. Finnis* (1859), 1 E. & E. 935; 28 L. J. M. C. 201; 5 Jur. (N. S.) 791). But they are not bound to issue their warrant for the sum appearing in the certificate if it is shown, without questioning the auditor's decision, that the sum in question is not due, as for example, where it has been paid (*Reg. v. Fordham* (1873), L. R. 8 Q. B. 501; 42 L. J. M. C. 153; 22 W. R. 85).

A sum certified by the auditor to be due is in the nature of a debt, and the debt, being provable in bankruptcy, is barred by an order of discharge (*Reg. v. Master* (1869), L. R., 4 Q. B. 285; 38 L. J. M. C. 73; 17 W. R. 442; s. c. *nom. Reg. v. Martin*, 19 L. T. 733).

As to the auditor's costs, reference may be made to *Prest v. Royston Union* (1875), 33 L. T. 564; 24 W. R. 174, which was the sequel to *Reg. v. Fordham*, cited above.

### Orders and Schemes.

Appointment of Commissioners and preparation of Orders and schemes.

**Sect. 15.**—(1.) It shall be lawful for Her Majesty in Council to refer to a Committee of the Privy Council the appointment of Commissioners to prepare such Orders and schemes as are required for carrying this Act into effect, and the Committee may settle the Orders and



schemes so prepared, and may employ such persons as they may deem necessary for the purposes of this Act. 62 & 63 Vict.  
c. 14, s. 15  
(1).

**Note.—Committee of Privy Council.**—The Lord President of the Privy Council, the President of the Local Government Board, Lord James of Hereford, C. T. Ritchie, Esq., M.P., J. L. Wharton, Esq., M.P., and E. R. Wodehouse, Esq., M.P., or any three of them, have been appointed the Committee of the Privy Council for the purposes of the present Act: *London Gazette*, July 14, 1899.

**Commissioners.**—Sir Hugh Owen, G.C.B., Sir Samuel Johnson, and A. T. Lawrence, Esq., Q.C., have been appointed Commissioners under the present sub-section.

**Orders in Council.**—The following are the subject-matters to be dealt with by Orders in Council under the present Act.

The formation of the metropolitan boroughs and the determination of their boundaries, and the establishment and incorporation of the borough councils: see sect. 1.

The determination of the number of councillors, the number and boundaries of wards, and the apportionment of the councillors among the wards: see sect. 2 (2).

The division of parishes and certain other dealings with parish and other boundaries: see sects. 17 (2), 18 (1, 2, 4).

The addition of an urban district to the county of London in certain cases: see sect. 18 (3).

The annexation of Penge to a London borough, or its separation from London, and consequential matters: see sect. 20 (1).

The detachment of Kensington Palace from the borough of Westminster: see sect. 21.

The naming of the metropolitan boroughs: see sect. 27 (1, a).

The determination of the dates for the retirement of the first aldermen and councillors: see sect. 27 (1, b).

The giving of directions as to the first meeting of the borough councils, and the temporary modification of the Act with reference to the first constitution of a borough council: see sect. 27 (1, c).

The adaptation of the enactments relating to the registration of electors: see sect. 27 (2).

The bringing into force of the revised lists of voters in the year 1900: see sect. 27 (3).

The adaptation of the transitory provisions of the Local Government Act, 1894, as incorporated with the present Act: see sect. 33 (2).

**Schemes.**—As to the purposes for which schemes are to be made, the procedure with reference to the making of schemes, and the effect of schemes when made, see sect. 16 and the note thereto.

(2.) Before any Order in Council forming an area into a borough is made under this Act, the draft thereof shall be laid before each House of Parliament for a period of not less than thirty days during the session of Parliament, and if either of those Houses before the expiration

62 & 63 Vict.  
c. 14, s. 15  
(2).

of those thirty days presents an address to Her Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft Order.

(3.) The Commissioners shall for the execution of their duties under this Act have the like powers as inspectors of the Local Government Board.

**Note.—Powers of Local Government Board Inspectors.**—The powers of these inspectors are derived from sect. 296 of the Public Health Act, 1875, which enacts that “Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts.”

With respect to the powers of poor law inspectors to summon witnesses, &c., sect. 21 of the Poor Law Board Act, 1847 (10 & 11 Vict. c. 109), provides as follows:—

“The said inspectors may summon before them such persons as they may think necessary for the purpose of being examined before them upon any matter concerning the administration of the laws relating to the relief of the poor, or any other matter placed by law under the control or regulation of the commissioners, or for the purpose of producing and verifying upon oath any books, contracts, agreements, accounts, writings, or copies of the same, in anywise relating to such matter, and not relating to or involving any question of title to any lands, tenements, or hereditaments not being the property of any parish or union, and may examine any person whom they shall so summon, or who shall voluntarily come before them to be examined upon any such matter upon oath, which each of the said inspectors shall be empowered to administer, or instead of administering an oath, the inspector may require the party examined to make and subscribe a declaration of the truth of the matter respecting which he shall have been or shall be so examined; and all summonses made by any such inspector for any such purpose as aforesaid shall be obeyed by all persons as if such summons had been the summons and order of the commissioners, and the non-observance thereof shall be punishable in like manner: and the costs and expenses of such person so summoned shall be paid in such cases and in such manner as the costs and expenses of persons summoned under the authority of the first-recited Act are now payable: Provided always, that no person shall be required in obedience to any such summons to go or travel more than ten miles from his place of abode.”

Sect. 26 of the same Act enacts that “every person who upon any examination under the authority of this Act shall wilfully give false evidence, or wilfully make or subscribe a false declaration, shall, on being convicted thereof, suffer the pains and penalties of perjury; and every person who shall refuse or wilfully neglect to attend in obedience to any summons of . . . any inspector, or to give evidence, or who shall wilfully alter, suppress, conceal, destroy, or refuse to produce any books, contracts, agreements, accounts, maps, plans, surveys, valuations, or writings, or copies of the same, which may be required to be produced for the purposes of this Act, to any person authorised

by this Act to require the production thereof, shall be guilty of a 62 & 63 Vict. misdemeanour." It is, however, by no means clear how far, if at all, c. 14, s. 15 this section is extended so as to apply to inquiries before the commis- (3), n. sioners under the present Act.

(4.) Any expenses incurred by the Committee under this Act shall, to the amount certified by the Treasury, be paid by the London County Council out of the county fund.

**Sect. 16.**—(1.) A scheme under this Act may make provision— Provisions to be made by scheme.

- (a) for any matters which under this Act are to be regulated by scheme; and
- (b) for any of the purposes, except police, for which a scheme may be made under Part Eleven of the Municipal Corporations Act, 1882, so far as 45 & 46 Vict. those purposes are consistent with this Act; c. 50. and
- (c) for anything which may be done with respect to a parish by an order under section fifty-seven of the Local Government Act, 1888, or may 51 & 52 Vict. be done under section thirty-three of the Local c. 41. Government Act, 1894, so, however, that parishes 56 & 57 Vict. in different unions shall not be united except c. 73. with the approval of the Local Government Board; and
- (d) for such adjustments as may be required for carrying into effect any of the provisions of this Act or for preventing any injustice with respect to the incidence of any rate or the discharge of any liability or otherwise, and in particular for such adjustments as may be required for the efficient maintenance of any libraries, baths, or washhouses which have been maintained under the provisions of any of the adoptive Acts; and
- (e) for preserving, so far as may appear necessary or expedient, any right, power, exemption, or immunity heretofore exercised or enjoyed in respect of property belonging to or occupied by the Crown or any Government department; and
- (f) for making such alterations in the boundaries of the electoral divisions for the purpose of school board elections as may be rendered necessary by any alteration in the area of the county of London; and

62 & 63 Vict.  
c. 14, s. 16  
(1).  
57 & 58 Vict.  
ch. cexiii.

(g) for repealing or modifying any local Act other than the London Building Act, 1894; and  
(h) for carrying into effect this Act or any Order in Council made thereunder;  
and may contain any incidental, consequential, or supplemental provisions, which may appear to be necessary or proper for the purposes of the scheme.

**Note.—Provisions to be contained in Schemes.—**

The matters which are expressly required by the other sections of the present Act to be regulated by schemes are the following:—

The abolition of separate authorities under the adoptive Acts, and the transfer of their functions to the borough councils: see sect. 4 (2).

The area within which powers and duties of a borough council under any Act conferring powers in relation to some particular area are to be exercised and performed: see sect. 4 (3).

The payment of the expenses of the borough council out of the general rate, and the discontinuance of separate sewers rates and separate lighting rates: see sect. 10 (1).

The placing of Woolwich under the general law applying to metropolitan boroughs: see sect. 19 (1).

The making of such provisions as may be necessary for the apportionment and transfer of property and liabilities in relation to the hamlet of Penge, and for the repeal of the application of metropolitan enactments to Penge and the application thereto of the law not applying to London: see sect. 20 (2).

The vesting of the powers and duties of any vestry which relate to the affairs of the church in the inhabitants; the vesting of any interest of the vestry in church property in the incumbent and churchwardens or one or some of them; and the collection of any rate connected with a church or an incumbent: see sect. 23 (1).

The right to use certain buildings in churchyards for church purposes: see sect. 23 (2).

The substitution of nominees of the borough council for overseers as trustees of charities: see sect. 23 (4).

The carrying into effect of the provisions of the Act as to existing officers: see sect. 30 (4).

It may further be mentioned in this connection that several of the provisions of the Act are expressed to be subject to any scheme under the Act. These provisions are:—

The provisions transferring the powers, etc., of elective vestries and district boards to the borough councils: see sect. 4 (1).

The provisions for the levy of rates required to meet expenses under Acts not extending to the whole of a borough: see sect. 10 (4).

The provision that the Act shall apply to Woolwich in like manner as if the local board of health thereof were an administrative vestry: see sect. 19 (2).

The provisions for the vesting in the borough council of the legal interest in property vested in the overseers or churchwardens and overseers: see sect. 23 (3).

The provisions for the application of the transitory provisions of the Local Government Act, 1894: see sect. 33 (2).

The provision in sect. 17 (2) that certain places are to be

separate parishes also is to take effect only unless otherwise provided by a scheme. 62 & 63 Vict. c. 14, s. 16

*Purposes of Scheme under Municipal Corporations Act (Note to Clause b).*—Part XI. of the Municipal Corporations Act, 1882, which comprises sects. 210–218, is concerned with the creation of new municipal boroughs by charter. A petition for such a charter is by sect. 211 to be referred to a committee of the Privy Council. And by sect. 213 (which is quoted at length *infra*), where such a petition is referred to the Committee, the Committee are to settle a “scheme.”

The purposes to be provided for by the scheme are, by sect. 213, “the adjustment of the powers, rights, privileges, franchises, duties, property, and liabilities of any then existing local authority whose district comprises the whole or part of the area of” the borough proposed to be created, “either with or without any adjoining or other place, and also of any officer of that authority.” And “the scheme, so far as it appears to the Committee of Council to be necessary or proper for carrying into effect the said adjustment as regards any local authority existing at the time of the making of the scheme, may contain provisions for the continuance of that authority, or for the abolition total or partial of that authority, or for the creation of another authority or authorities, and the alteration of the district of the existing local authority, and the union or other relation of the existing local authority and the authority or authorities so created, and for the continuance, modification, transfer, vesting, and extension to the whole of the borough of all or any of the powers, rights, privileges, franchises, duties, property, and liabilities of the existing local authority, and may contain such provisions as appear to the Committee of Council to be necessary or proper for fully carrying into effect any such adjustment and provisions as aforesaid.”

Schemes under the Act are published in the London Gazette before coming into force, and are subsequently confirmed, usually by Order in Council, but occasionally by Act of Parliament.

A list of the schemes made under the Act, and confirmed up to January 1st, 1893, with references to the Gazettes in which they will be found, is given in Appendix II. to the “Index to Statutory Rules and Orders,” published in that year.

The schemes published since January 1st, 1893 up to January 1st, 1899, with references to the Gazettes in which they will be found, are as follows:—

<i>London Gazette,</i>	
The Brighouse (Borough) Scheme, 1893 . . . . .	Sept. 29, 1893, p. 5493.
The Borough and Harbour of Whitehaven Scheme, 1894 . . . . .	May 11, 1894, p. 2770.
The Borough of Colne Scheme, 1895 . . . . .	Aug. 16, 1895, p. 4033.
The Todmorden (Borough) Scheme, 1896 . . . . .	Jan. 7, 1896, p. 77.
The Borough of Hemel Hempstead Scheme, 1898 . . . . .	Feb. 25, 1898, p. 1192.
The Borough of Hove Scheme, 1898 . . . . .	April 22, 1898, p. 2512.

*Alterations of Parish Boundaries (Note to Clause (c)).*—Sect. 57 of the Local Government Act, 1888, is concerned with the alteration of the boundaries of parishes and non-municipal county districts. It provides as respects any parish for the making of an order for “the alteration or definition of the boundary thereof”; or, “the division thereof or the union thereof with any other such . . . parish or parishes, or the transfer of part of a parish to another parish.”

With reference to the incidental matters that may be provided for

62 & 63 Vict. c. 14, s. 16 (1), n. in an order under the Act of 1888 (including an order with reference to parish boundaries under sect. 57) sect. 59 enacts as follows :—

“(1.) A scheme or order under this Act may make such administrative and judicial arrangements incidental to or consequential on any alteration of boundaries, authorities, or other matters made by the scheme or order as may seem expedient.

“(4.) Any scheme or order made in pursuance of this Act may, so far as may seem necessary or proper for the purposes of the scheme or order, provide for all or any of the following matters, that is to say—

“(a.) May provide for the abolition, restriction, or establishment, or extension of the jurisdiction of any local authority in or over any part of the area affected by the scheme or order, and for the adjustment or alteration of the boundaries of such area, and for the constitution of the local authorities therein, and may deal with the powers and duties of any council, local authorities, quarter sessions, justices of the peace, coroners, sheriff, lieutenant, custos rotulorum, clerk of the peace, and other officer therein, and with the costs of any such authorities, sessions, persons, or officers as aforesaid, and may determine the status of any such area as a component part of any larger area, and provide for the election of representatives in such area, and may extend to any altered area the provisions of any local Act which were previously in force in a portion of the area; and

“(b.) May make temporary provision for meeting the debts and liabilities of the various authorities affected by the scheme or order, for the management of their property, and for regulating the duties, position, and remuneration of officers affected by the scheme or order, and applying to them the provisions of this Act as to existing officers; and

“(c.) May provide for the transfer of any writs, process, records, and documents relating to or to be executed in any part of the area affected by the scheme or order, and for determining questions arising from such transfer: and

“(d.) May provide for all matters which appear necessary or proper for bringing into operation and giving full effect to the scheme or order; and

“(e.) May adjust any property, debts, and liabilities affected by the scheme or order.”

Sub-sect. (6) of the same section provides that in certain cases a scheme or order under the Act may amend a local and personal Act.

As regards schemes under the present Act, however, amendments of such Acts are provided for by clause (e) of the present sub-section.

Definitions of the expressions “powers,” “duties,” “property” and “liabilities” contained in the Act of 1888 are quoted in the note to sect. 34 of the present Act.

The expression “local authority” is not defined in the Act of 1888. It was held in *Reg. v. Durham County Council*, *Loc. Govt. Chron.*, 1897, 70, that a burial board is a local authority within sect. 59.

Orders under sect. 57 are not published, nor are they necessarily accessible even to the ratepayers of the areas they affect.

Sect. 59, however, applies not only to orders under sect. 57, but also, *inter alia*, to provisional orders for the alteration of county and

borough boundaries made under sects. 52 and 54 of the Local Government Act, 1888, many of which orders incidentally alter parish boundaries. A perusal of provisional orders of the kind, which may be found in considerable numbers in the schedules to the Local Government Board's Provisional Orders Confirmation Acts of recent years, will accordingly show the nature of the provisions it has been found expedient to make under sect. 59 in connection with alterations of boundaries. See, for example, the orders in the schedules to 60 & 61 Vict. C.C. cxxxviii; cxxxix; cxliv; 61 & 62 Vict. C.C. lxxiii; cexi.

Among the provisions usually inserted in orders for the alteration of parish boundaries, it may be mentioned, are provisions for the preservation of settlements and status of irremovability acquired in the parishes affected.

It should be observed in connection with this subject that certain alterations in parish boundaries are under sects. 17 and 18 of the present Act to be made by Order in Council.

*Parish Council Powers (Note to Clause (c) continued).*—Sect. 33 of the Local Government Act, 1894, is as follows:—

“(1.) The Local Government Board may, on the application of the council of any municipal borough, including a county borough, or of any other urban district, make an order conferring on that council or some other representative body within the borough or district all or any of the following matters, namely, the appointment of overseers and assistant overseers, the revocation of appointment of assistant overseers, any powers, duties, or liabilities of overseers, and any powers, duties, or liabilities of a parish council, and applying with the necessary modifications the provisions of this Act with reference thereto.

“(2.) Where it appears to the Local Government Board that, by reason of the circumstances connected with any parish in a municipal borough (including a county borough) or other urban district divided into wards, or with the parochial charities of that parish, the parish will not, if the majority of the body of trustees administering the charity are appointed by the council of the borough or district, be properly represented on that body, they may, by their order, provide that such of those trustees as are appointed by the council, or some of them, shall be appointed on the nomination of the councillors elected for the ward or wards comprising such parish or any part of the parish.

“(3.) Any order under this section may provide for its operation extending either to the whole or to specified parts of the area of the borough or urban district, and may make such provisions as seem necessary for carrying the order into effect.

“(4.) The order shall not alter the incidence of any rate, and shall make such provisions as may seem necessary and just for the preservation of the existing interests of paid officers.

“(5.) An order under this section may also be made on the application of any representative body within a borough or district.

“(6.) The provisions of this section respecting councils of urban districts shall apply to the administrative county of London in like manner as if the district of each sanitary authority in that county were an urban district, and the sanitary authority were the council of that district.

“(7.) The Local Government Board shall consult the Charity Commissioners before making any order under this section with respect to any charity.”

So far as this section refers to overseers and their powers and duties, it will have no application under the present Act, since under sect. 11

62 & 63 Vict.  
c. 14, s. 16  
(1), n.

the councils of the metropolitan boroughs will themselves be the overseers for every parish in their borough. It seems also that the provisions of the section as to assistant overseers will have no application under the present Act, for it appears to be intended that after the Act comes into operation assistant overseers as such shall no longer be appointed in metropolitan boroughs; but this point is not free from doubt: see the note to sect. 30.

The section as incorporated with clause (c) of the present subsection will however enable powers, duties, or liabilities of a parish council to be conferred on the council of a metropolitan borough by a scheme under the present Act.

Apart also from any scheme under the present Act, it will be open to the Local Government Board, by order under the section, to confer powers, duties, and liabilities of a parish council on the council of a metropolitan borough at any time.

The powers, etc. of a parish council under the Local Government Act, 1894, fall into two categories, the first category consisting of powers, etc. which were transferred to parish councils by the Act from existing authorities—*e.g.* the powers, etc. of the vestry, transferred to the parish council by sect. 6 (1, a)—the second consisting of powers, etc. attached to parish councils directly by the Act, without any transfer from another authority, *e.g.* the power to hire land for allotments under sect. 9.

There seems to be a good deal of ground for arguing that sect. 33 is confined to powers, etc. of a parish council of the latter kind. The Local Government Board however have taken a very wide view of the section in this respect, and have interpreted it as enabling them not only to invest urban authorities, etc. with what may be called the original powers of a parish council, but also to transfer to such authorities such functions of existing authorities as in the case of a rural parish were transferred to the parish councils by the Act, and to apply to such authorities the provisions of the Act relating to the powers, etc. of a parish council in this wide sense.

Having regard to the terms of sub-sect. (6) of the section, which relates to the extension of the section to London, it would seem very arguable that the sanitary authorities are the only authorities in London on whom powers and duties can be conferred under the section. But in this respect also the Local Government Board have put a very wide interpretation on the section; and they have in many cases conferred the power of appointing overseers and assistant overseers and various powers of parish councils upon elective vestries of parishes comprised in districts under district boards, although such vestries are not sanitary authorities.

No doubt it is very improbable that the Court would hold any Order of the Local Government Board made under the section to be *ultra vires*. Schemes under the present Act will have statutory force, and no question as to whether they are *ultra vires* can be raised; see *post*, p. 152.

Orders under sect. 33 of the Local Government Act, 1894, are not published, nor are they necessarily accessible even to the ratepayers of the areas they affect. Lists of orders of the kind indicating the subject matters with which they deal have however been annually published in the appendices to the annual volumes of statutory rules and orders.

The provisions of the Local Government Act, 1894, that seem most likely to be applied to metropolitan boroughs by scheme under sect. 33 of that Act as incorporated with clause (c) of the present sub-



section are those relating to charities, which are discussed in the note 62 & 63 Vict. to sect. 23 (5). Some account of other provisions of the Local Government Act, 1894, relating primarily to rural parishes which have been (1), n. or may be applied in London under sect. 33 may be useful.

Sect. 5 of the Act of 1894 confers the power of appointing overseers and of appointing and revoking the appointment of assistant overseers on parish councils; provides that churchwardens are no longer to be *ex officio* overseers in rural parishes; and provides for the transfer of the legal estate in parish property, with some exceptions, to the parish council. Where the Local Government Board have conferred the power of appointing overseers on a London vestry they have generally applied this section so as to deprive the churchwardens of their position as *ex officio* overseers.

Sect. 6 of the Act of 1894, *inter alia*, provides for the transfer of the civil functions of churchwardens, and of certain functions of the overseers to the parish council. It may be observed in this connection that the Local Government Board, so far as the writer is aware, have not under sect. 33 conferred any power of overseers on elective vestries or other authorities, except those transferred to the parish council in the case of a rural parish by sect. 6.

Sect. 6 also provides, *inter alia*, for the transfer to the parish council of a rural parish of "the powers exercisable with the approval of the Local Government Board by the board of guardians for the poor law union comprising the parish in respect of the sale, exchange, or letting of any parish property."

The principal Acts conferring on guardians the powers referred to in the enactment are the Union and Parish Property Acts, 1835 & 1837 (5 & 6 Will. IV, c. 69; 7 Will. IV & 1 Vict. c. 50), and the Parish Property and Parish Debts Act, 1842 (5 & 6 Vict. c. 18). These Acts are amended by sect. 8 of the Poor Law Act, 1889 (52 & 53 Vict. c. 56) and by sect. 52 (1) of the Local Government Act, 1894; and their operation is extended by the Sale of Exhausted Parish Lands Act, 1876 (39 & 40 Vict. c. 62) and apparently by sect. 7 of the Open Spaces Act, 1887 (50 & 51 Vict. c. 32).

Sect. 7 of the Act of 1894 is concerned with the "adoptive Acts," including the three groups of Acts comprised in the expression "adoptive Acts" in the present Act. It provides *inter alia* for the transfer of the functions of authorities under those Acts to parish councils. It is by virtue of this section that the Local Government Board have, as is mentioned in the note to sect. 4 (2), where the adoptive Acts are discussed, in many cases transferred the functions of authorities under those Acts in London to elective vestries.

Sect. 8 of the Act of 1894 provides as follows:

"(1) A parish council shall have the following additional powers, namely, power—

"(a) to provide or acquire buildings for public offices and for meetings and for any purposes connected with parish business or with the powers or duties of the parish council or parish meeting; and

"(b) to provide or acquire land for such buildings and for a recreation ground and for public walks; and

"(c) to apply to the Board of Agriculture under section nine of the Commons Act, 1876; and

"(d) to exercise with respect to any recreation ground, village green, open space, or public walk, which is for the time being under their control, or to the expense of which they have contributed, such powers as may be exercised by an

62 & 63 Vict.  
c. 14, s. 16  
(1), n.

urban authority under section one hundred and sixty-four of the Public Health Act, 1875, or section forty-four of the Public Health Acts Amendment Act, 1890, in relation to recreation grounds or public walks, and sections one hundred and eighty-three to one hundred and eighty-six of the Public Health Act, 1875, shall apply accordingly as if the parish council were a local authority within the meaning of those sections; and

- “(e) to utilise any well, spring, or stream within their parish and provide facilities for obtaining water therefrom, but so as not to interfere with the rights of any corporation or person; and
- “(f) to deal with any pond, pool, open ditch, drain, or place containing, or used for the collection of, any drainage, filth, stagnant water, or matter likely to be prejudicial to health, by draining, cleansing, covering it, or otherwise preventing it from being prejudicial to health, but so as not to interfere with any private right or the sewage or drainage works of any local authority; and
- “(g) to acquire by agreement any right of way, whether within their parish or an adjoining parish, the acquisition of which is beneficial to the inhabitants of the parish or any part thereof; and
- “(h) to accept and hold any gifts of property, real or personal, for the benefit of the inhabitants of the parish or any part thereof; and
- “(i) to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any parish property, not being property relating to affairs of the church or held for an ecclesiastical charity; and
- “(k) to contribute towards the expense of doing any of the things above mentioned, or to agree or combine with any other parish council to do or contribute towards the expense of doing any of the things above mentioned.

“(2.) A parish council may let, or, with the consent of the parish meeting, sell or exchange, any land or buildings vested in the council, but the power of letting for more than a year and the power of sale or exchange shall not be exercised, in the case of property which has been acquired at the expense of any rate, or is at the passing of this Act applied in aid of any rate, or would but for want of income be so applied, without the consent of the Local Government Board, or in any other case without such consent or approval as is required under the Charitable Trusts Acts, 1853 to 1891, for the sale of charity estates, provided that the consent or approval required under those Acts shall not be required for the letting for allotments of land vested in the parish council.

“(4.) Notice of any application to the Board of Agriculture in relation to a common shall be served upon the council of every parish in which any part of the common to which the application relates is situate.”

Many of these powers might obviously be conferred on the council of a metropolitan borough under sect. 33. The powers most likely to be of practical utility appear to be those conferred by clauses (b) (d) (g) (h) (i) and (k) of sub-sect. (1).

Sect. 9 of the Act, besides containing provisions as to the procedure

for the compulsory acquisition of land for allotments, which could 62 & 63 Vict. apparently not be applied in London, contains provisions as to the c. 14, s. 16 acquisition of land for the purposes of a parish council. In view, (1), n. however, of the provisions as to the acquisition of land by the council of a metropolitan borough under sect. 65 of the Local Government Act, 1888, as applied by Sched. II. of the present Act, it seems improbable that the provisions of sect. 9 of the Act of 1894 would be applied to such a council.

Sect. 10 of the Act of 1894 enables a parish council to hire land for allotments and contains provisions under which a parish council may be invested with compulsory powers of hiring land for this purpose. It seems clear that the powers of a parish council under this section could be conferred on the council of a metropolitan borough.

Sect. 13 of the Act of 1894, *inter alia*, empowers a parish council to undertake the repair and maintenance of all or any of the public footways in their parish, not being footpaths at the side of a public road.

Sect. 17 of the Act of 1894, *inter alia*, gives the parish council certain powers with regard to the custody of parish documents.

*Adjustments (Note to Clause d).*—As to adjustments by schemes under the present Act, see also sub-sect. (2). And as to the principles that should be observed in making adjustments under such Acts as the present, see *Re Buckinghamshire County Council and Hertfordshire County Council* [1899], 1 Q. B. 515; 68 L. J. Q. B. 417; 80 L. T. 85; 63 J. P. 356; *Re Rochdale Union and Haslingden Union* [1899], 1 Q. B. 540; 68 L. J. Q. B. 531; 80 L. T. 146; 47 W. R. 322.

*Electoral Divisions for School Board Elections.*—The boundaries of the existing electoral divisions of the administrative county of London for the purposes of school board elections were fixed by an order of the Education Department made under sect. 37 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), and dated October 7th, 1870. This order, which, with certain other orders of the Department, was specially confirmed by sect. 5 of the Elementary Education Act, 1873 (36 & 37 Vict. c. 86), will be found in the *London Gazette* of October 11th, 1870, p. 4413. The Lambeth division was subsequently divided by sect. 2 of the School Boards Act, 1885 (48 & 49 Vict. c. 38), and an order of the Education Department made under it, which does not appear to be published.

*Local Acts (Note to Clause g).*—By sect. 34 "local Act" is defined as including a provisional order confirmed by an Act, and the Act confirming the order.

This definition, however, leaves the meaning to be attached to "local Act" in the present sub-section very open.

The modern practice of dividing Acts into general Acts and local Acts, and printing the two sets of Acts in separate volumes, dates only from the beginning of the present century. And in *Reg. v. London County Council* [1893], 2 Q. B. 454; 63 L. J. Q. B. 4; 69 L. T. 580; 42 W. R. 1; 58 J. P. 21, it was held that, under the power to amend a local and personal Act contained in sect. 59 (6) of the Local Government Act, 1888, above referred to, a provision of a local character contained in an Act of Anne, which was in part of a general character, might be amended. And the judgments certainly seem to suggest that under that sub-section a modern Act of a local and personal character might be amended though it had passed through Parliament as a general Act, and been printed as such. The judgments also suggest that the fact that an enactment is confined to London is sufficient to make it "local." If "local Act" in the present sub-section were to

62 & 63 Vict. c. 14, s. 16 (1), n. receive this wide interpretation, however, the expression would practically cover all legislation exclusively applicable to London, and it could hardly have been intended that the power to amend or repeal local Acts by scheme should include power to repeal or amend any such legislation.

It may be observed that London legislation is peculiar in that there is very little if any distinction in substance between the kind of legislation effected by Acts relating to London passed and printed as general Acts and that effected by Acts passed and printed as local Acts. For example, the London Building Act, 1894, which was passed and printed as a local Act, was substantially a re-enactment of legislation that up to the passing of that Act was almost entirely contained in Acts confined in operation to London, but passed and printed as general Acts.

(2.) In making adjustments by a scheme under this section, regard shall be had to any composition, contribution, or exemption, whether statutory or otherwise, which has heretofore existed in regard to any portion of any area dealt with under the scheme.

**Note.—Adjustments.**—See clause (d) of the preceding subsection and the note thereon, *ante*, pp. 139, 147.

45 & 46 Vict. c. 50.  
48 & 49 Vict. c. 38. (3.) The provisions of the Municipal Corporations Act, 1882, as amended by the School Boards Act, 1885, with respect to a scheme under Part Eleven of the first-mentioned Act, shall apply in the case of any scheme under this Act with the necessary modifications, and any governors or trustees of the poor or other similar body under a local Act shall be deemed, but the London County Council shall not be deemed, to be a local authority within the meaning of those provisions.

There shall also be deemed to be local authorities within the meaning of the said provisions:—

(a) the mayor, commonalty, and citizens, and the Court of Aldermen of the City of London, so far as relates to any powers exerciseable by them or by officers appointed by them respectively within the ancient borough of Southwark; and

(b) the Dean and Chapter of the Collegiate Church of St. Peter, Westminster, so far as relates to any powers of local government exerciseable by them or their officers within the borough of Westminster, and the Court of Burgesses of the ancient city of Westminster.

**Note.—Schemes.**—Part XI. of the Municipal Corporation Act, 1882, comprising sects. 210–218 of that Act, is concerned with

the grant of charters of incorporation constituting new boroughs. 62 & 63 Vict. The provisions relating to the grant of a charter are not applied to London, and it will suffice, in order to make the provisions as to a scheme intelligible, to mention that by sects. 210 & 211 it is provided *inter alia* that a charter may be granted on the petition of inhabitant householders of a town, etc., and that any such petition shall be referred to a Committee of the Privy Council. The provisions with reference to a scheme which are applied to schemes under the present Act are contained in sects. 213, 214 and 218, and Sched. VII., which is referred to in sect. 214 (3).

The effect of these provisions of the Act of 1882, as applied by the present Act, is shortly this:—

After a draft of a proposed scheme has been prepared, notice of the fact and of a place where copies of the draft can be inspected and obtained will be published.

Objections to the proposed scheme may then be made by any "local authority" or persons affected thereby. As to the meaning of "local authority" for this purpose, see the present sub-section and sect. 213 (6) of the Act of 1882. The draft scheme must also be referred for consideration to the Secretary of State and the Local Government Board.

The scheme will then be settled, and notice of the fact and of places where copies of the scheme as settled may be inspected and obtained will be published.

At this stage a petition may be presented against it by a local authority affected or by a certain number of owners and ratepayers.

If such a petition is presented and is not withdrawn, the scheme will require confirmation by Parliament. But if no petition is presented, or if all petitions presented are withdrawn, the scheme may be confirmed either by Parliament or by Order in Council.

In any case the scheme when confirmed will have statutory force, and cannot be questioned either on the ground that it is *ultra vires* or on the ground of any irregularity in the procedure observed in connection with the making of the scheme.

So much being premised, the provisions of the Act of 1882, above mentioned, may be set out. They are as follows:—

Sect. 213.—“(1.) Where a petition for a charter is referred to the Committee of Council, and it is proposed by the charter to extend the Municipal Corporation Acts to the municipal borough to be created by the charter, the Committee of Council may settle a scheme for the adjustment of the powers, rights, privileges, franchises, duties, property, and liabilities of any then existing local authority whose district comprises the whole or part of the area of that borough, either with or without any adjoining or other place, and also of any officer of that authority.

“(2.) The scheme, so far as it appears to the Committee of Council to be necessary or proper for carrying into effect the said adjustment as regards any local authority existing at the time of the making of the scheme, may contain provisions for the continuance of that authority, or for the abolition total or partial of that authority, or for the creation of another authority or authorities, and the alteration of the district of the existing local authority, and the union or other relation of the existing local authority and the authority or authorities so created, and for the continuance, modification, transfer, vesting, and extension to the whole of the borough of all or any of the powers, rights, privileges, franchises, duties, property, and liabilities of the existing local authority, and may contain such provisions as appear to

62 & 63 Vict.  
c. 14, s. 16  
(3), n.

the Committee of Council to be necessary or proper for fully carrying into effect any such adjustment and provisions as aforesaid.

“(3.) The scheme, when settled by the Committee of Council, shall be published in the London Gazette,<sup>1</sup> and shall not be of any effect unless confirmed as herein-after mentioned.

“(4.) Where, within one month after the publication of the scheme in the London Gazette, a petition against it by any local authority affected thereby, or by not less than one twentieth of the owners and ratepayers of the borough (such twentieth to be one twentieth in number of the owners and ratepayers of the borough taken together, or the owners and ratepayers in respect of one twentieth of the rateable property in the borough and the owners and ratepayers in all cases to include women not under coverture) has been received by the Committee of Council, and is not withdrawn, the scheme shall require the confirmation of Parliament, and the Committee of Council may, if they think fit, submit it to Parliament for confirmation; but otherwise, at any time after the expiration of the said month, or after the withdrawal of any petition that has been presented, the Committee of Council may, if they think fit, submit the scheme for confirmation, either to Parliament or to Her Majesty in Council, and in the latter case it shall be lawful for Her Majesty to confirm the scheme by Order in Council.

“(5.) A scheme, when confirmed by Parliament or by Order in Council, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the scheme were part of this Act.

“(6.) A local authority for the purposes of this Part means a sanitary authority, (not being the mayor, aldermen, and burgesses of a borough subject to the Municipal Corporations Acts), also the corporation of a borough not subject to the Municipal Corporations Acts, a burial board, trustees, commissioners or other persons who, as a public body and not for their own profit, act under any Act for paving, lighting, supplying with water or gas, cleansing, watching, regulating or improving any town or place, or for providing or maintaining a cemetery or market in or for any town or place, and any commissioners, trustees, or other persons (not being justices) maintaining any police force, and any other authority not in this section excepted [*and not being a school board*],<sup>2</sup> and having powers of local government and of rating for public purposes.

“(7.) The district of a local authority for the purposes of this section means the area within which such authority can exercise any powers or rights.

Sect. 214.—“(1.) A scheme shall, before being settled by the Committee of Council, be referred for consideration to the Secretary of State and the Local Government Board, and, if and as far as it is intended to affect any authority which is a harbour authority within the meaning of the Harbours and Passing Tolls, &c. Act, 1861, to the Board of Trade.

“(2.) A scheme shall in every case provide for placing the new borough within the jurisdiction of the council as the sanitary authority.

“(3.) The regulations contained in the Seventh Schedule with respect to the scheme shall be observed.

(1) As to this provision, see sub-sect. (4) of the present section.

(2) These words are repealed by the School Boards Act, 1885; see *post*, p. 151.

"(4.) If the Committee of Council are satisfied that a local authority or other petitioners have properly promoted or properly opposed a scheme before them, and that for special reasons it is right that the reasonable costs incurred by the authority or other petitioners in such promotion or opposition should be paid as expenses properly incurred by the local authority in the execution of their duties, the Committee of Council may order those costs to be so paid, and they shall be paid accordingly.

Sect. 218.<sup>1</sup>—“(1.) Where a scheme for a borough has been confirmed under this Part, or any former enactment, and the municipal corporation of the borough or one-twentieth of the owners and ratepayers of the borough (estimated as in this Part mentioned), or a local authority affected by the scheme, petition the Queen for an amending scheme, the petition shall be referred to a Committee of the Lords of Her Majesty's Privy Council (included in the term the Committee of Council in this Part), and shall be proceeded on, and this Part shall apply thereto, as nearly as may be, as if the same were a petition for a charter extending the Municipal Corporations Acts to a municipal borough to be incorporated.

“(2.) The Committee of Council, if they think fit to submit the amending scheme for confirmation, shall submit the same to Parliament, or they may submit the same to Her Majesty in Council, if the original scheme was confirmed by Order in Council; and in the latter case it shall be lawful for Her Majesty to confirm the amending scheme by Order in Council.

“(3.) An amending scheme, when confirmed by Parliament, or by Order in Council, as the case may require, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the amending scheme were part of this Act.”

By the School Boards Act, 1885 (48 & 49 Vict. c. 38), the words “not being a school board” in sect. 213 (6) of the Municipal Corporations Act were repealed, and it is provided that “a scheme under that section, if affecting a school board—(a) shall before being settled by the Committee of Council be referred to the consideration of the Education Department; and (b) shall not place the new borough under more than one school board; and (c) may provide for the continuance of any byelaws in force at the date of the scheme.”

The seventh schedule to the Municipal Corporations Act, 1882, referred to in sect. 214 (3) of that Act is as follows:—

1. “The Committee of Council may, if they think fit, require the draft of a proposed scheme to be submitted to them, either together with the petition for a charter, or at any subsequent period.

2. “The draft of a proposed scheme shall be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

3. “Before settling the scheme the Committee of Council shall consider any objections which may be made thereto by any local authority or persons affected thereby.

4. “The scheme, when settled, shall, besides being published in the London Gazette,<sup>2</sup> be published by advertisement, or placards, or

(1) As to this section, see *post*, p. 152.

(2) This provision is modified for the purposes of the present Act by sub-sect. (4), *post*, p. 152.

62 & 63 Vict. c. 14, s. 16 (3), n. handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

5. "Where a scheme is submitted to Parliament for confirmation, the Committee of Council may introduce a Bill for the confirmation of the scheme, which Bill shall be a Public Bill.

6. "Before such Bill is introduced into Parliament the Committee of Council may alter the scheme in such manner as they think proper.

7. "If while the Bill confirming a scheme is pending in either House of Parliament a petition is presented against the scheme, the Bill, so far as it relates to such scheme, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Private Bill.

8. "A scheme shall come into operation at the date of its confirmation or any later date mentioned in the scheme.

9. "The confirmation of a scheme shall be conclusive evidence that all the requirements of this Act with respect to proceedings required to be taken previously to the making of the scheme have been complied with, and that the scheme has been duly made, and is within the powers of this Act."

With reference to these enactments, the following points may be mentioned:—

It is not very clear that a scheme under the present Act is in all cases to be confined in operation to a single metropolitan borough. But it is probably intended that this should be so. If this is not so, there will be considerable difficulty in applying the provisions of sect. 213 (4) as to a petition by owners and ratepayers.

The provision in sect. 213 (5) will prevent any question being raised as to whether a scheme is or is not *ultra vires*. See *Institute of Patent Agents v. Lockwood* [1894], A. C. 347; 63 L. J. P. C. 74; 71 L. T. 205.

It is not very clear whether sect. 218, as to amending schemes, is intended to be applied to schemes under the present Act or not.

The power to deal with the jurisdiction, &c., of school boards under Part XI. of the Act of 1882, as amended by the School Boards Act, 1885, is controlled as regards schemes under the present Act by sect. 31 (5), which provides that nothing in the Act or in any order or scheme under the Act shall abridge, alter, or affect the powers, rights, duties, or jurisdiction of the School Board for London over the area which for the time being constitutes the administrative county of London.

(4.) Provided that notification in the London Gazette, and in such other manner as the Committee of Council may direct, of a draft scheme having been prepared or of a scheme having been settled, and of the place where copies of it can be inspected and obtained, shall be substituted for publication of the draft scheme or scheme in the London Gazette or in the manner required by the Seventh Schedule to the Municipal Corporations Act, 1882.

45 & 46 Vict.  
c. 50.

**Note.—Notice of Scheme.**—Sched. VII. to the Municipal Corporations Act, 1882, is set out in the note to the preceding section. It will be observed that that schedule does not require a draft scheme



to be published in the London Gazette, but only a scheme when settled.

62 & 63 Vict.  
c. 14, s. 6  
(4), n.

**Sect. 17.**—(1.) Every part of the administrative county of London outside the City shall be situate in some borough and some parish, and a parish shall not be situate in more than one borough, or partly in a borough and partly in the City.

Rules as to  
boroughs and  
parishes.

**Note.—City.**—As to the meaning of “City” in the present Act, see the note to sect. 1.

(2.) An Order in Council under this Act may divide a parish or place into parts for the purpose of giving effect to this section or of constituting a satisfactory area for a borough, and, unless otherwise provided by the Order or by a scheme under this Act, each part shall be a separate parish.

**Note.—Parish Boundaries.**—As to the alteration of parish boundaries by scheme under the present Act, see sect. 16 (1, c), and the note to that clause, *ante*, p. 141.

**Sect. 18.**—(1.) Every part of a parish in London which is wholly detached from the principal part of the parish shall by an Order in Council under this Act be annexed to or divided between any of the boroughs which it adjoins, and be either constituted a separate parish or be annexed to or divided between any of the parishes which it adjoins, so however that the provisions of this Act with respect to a parish not being situate in more than one borough shall be observed.

Detached  
parts of  
parishes.

Provided that if the Commissioners under this Act make a special report to Parliament that by reason of anything done under any of the adoptive Acts, or for any other exceptional reason, it is impracticable to deal with a detached part of a parish in manner required by the foregoing provisions of this section, those provisions shall not apply.

And further provided that the foregoing provisions of this section shall not apply to the hamlet of Knightsbridge.

**Note.—Parish Boundaries.**—There is no provision in this sub-section like that in sect. 17 (2), recognizing that the provisions of the Order in Council as to parish boundaries may be modified by scheme. And there is, therefore, some doubt whether, when a place is constituted a separate parish, or annexed to another parish under this sub-section, that arrangement could be altered by a scheme.

62 & 63<sup>rd</sup> Vict.  
c. 14, s. 18  
(2).

(2.) Where the county of London surrounds a detached part of a parish in another county, the foregoing provisions shall apply, and the detached part shall for all purposes become part of the county of London and of the appropriate county electoral division.

(3.) Where a detached part so becomes part of the county of London, and is part of any urban district the remainder of which adjoins the county of London, the whole of the district may, by Order in Council, if it seems expedient after considering all the circumstances of the case, be added to and form for all purposes part of the county of London and of the appropriate borough.

(4.) Where a detached part of a parish in the county of London is wholly surrounded by any other county, the detached part shall for all purposes become part of that county, and where a detached part as aforesaid is surrounded by more than one county, that detached part shall become part of such county as shall be determined by Order in Council under this Act, and every such detached part shall, by Order in Council, be either constituted a separate parish or annexed to or divided between any parish or parishes which it adjoins, and be added to the appropriate county district and county electoral division.

(5.) Nothing in this section shall apply to the City of London.

(6.) The London County Council and the council of any adjoining county shall be entitled to be heard on any alteration or proposed alteration of the area of the county of London.

**Note.—Alteration of Area of County of London.**—The area of the county of London may be altered under the present section, and also under sect. 20, by the exclusion of Penge.

Whether it could be altered also under the general provisions as to the alteration of boundaries in sect. 1 is not clear; see the note to that section.

Application  
of Act to  
Woolwich.

**Sect. 19.**—(1.) A scheme under this Act shall provide for placing Woolwich under the general law applying to metropolitan boroughs, and for the repeal of the application thereto of the provisions of the Public Health Acts and other enactments not applying to London, and for the application thereto of the Metropolis Management Acts, 1855 to 1893, and other enactments applying to London.

**Note.—Woolwich.**—Woolwich at present stands in a very anomalous position as regards its local government.

It is under the jurisdiction of a local board of health constituted 62 & 63 Vict. originally by a provisional order confirmed by the Public Health c. 14, s. 19 Supplemental Act, 1852 (No. 2) (15 & 16 Vict. c. 69), under which (1), n. the Public Health Act, 1848 (11 & 12 Vict. c. 63), and the amending Acts were applied to Woolwich.

By the Metropolis Management Act, 1855, Woolwich was included in the Metropolis as one of the parishes in Schedule A. And it is now accordingly within the County of London, and subject to the jurisdiction of the London County Council. But by sect. 238 of that Act, it was provided that the Act should extend to Woolwich to the limited extent therein specified only. And the Metropolis Management Acts, have accordingly only a limited and partial application in Woolwich.

The Public Health Act, 1848, and the amending Acts were repealed in general terms by sect. 343 of the Public Health Act, 1875; but by sect. 2 of that Act it was enacted that the Act should not, save as expressly provided, extend to the Metropolis. This left it doubtful whether or not the provisions of the Public Health Act, 1848, and the other earlier Acts repealed by the Act of 1875 still applied to Woolwich. By sect. 2 of the Local Government Board's Provisional Orders Confirmation (Amersham Union &c.) Act, 1880 (43 & 44 Vict. c. lix.), however, it was, after reciting these doubts provided that the Acts in question, so far as those Acts were in force in the parish of Woolwich immediately prior to the passing of the Public Health Act, 1875, should be deemed to have remained and to continue in force in that parish.

By the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), the Woolwich Local Board of Health were made a sanitary authority for the purposes of that Act (*Ib.* s. 99); sect. 2 of the above-mentioned Act of 1880 was repealed; and it was provided by sect. 102 that "the provisions of the Public Health Acts, which are set out in the second schedule to this Act, except so far as they are superseded by this Act, shall extend to the parish of Woolwich, and to the local board of health thereof, in like manner as they apply to any urban sanitary district elsewhere, and the sanitary authority thereof, without prejudice to the existing effect of the Metropolis Management Act, 1855, and the Acts amending the same, or to the powers, duties, and liabilities of the county council and the local board of health of Woolwich under the latter Acts." The second schedule to the Act enumerates most of the sections of the Public Health Act, 1875, and the whole of certain amending Acts.

The provisions of sects. 31, 46 and 48 of the Local Government Act, 1894, which regulate elections under that Act, and prescribe the qualifications of the electors and of the persons to be elected at such elections, extend to the Woolwich Local Board of Health as well as to metropolitan vestries.

The Local Board are a local authority under the London Building Act, 1894 (56 & 57 Vict. c. cxxiii. See sect. 5 (42)), and under Part II. of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70, see ss. 54, 92 and Sched. I.).

(2.) Subject to the provisions of any such scheme, this Act shall apply to Woolwich in like manner as if the local board of health thereof were an administrative vestry.

(3.) Nothing in this Act shall prevent the council of

62 & 63 Vict. c. 14, s. 19 (3). any borough consisting of or comprising Woolwich from continuing to make any contribution for the purpose of technical education hitherto made by any local authority, or from exercising any existing powers of carrying on a market.

**Note.—Technical Education.**—The Technical Instruction Acts, 1889 and 1891 (52 & 53 Vict. c. 76; 54 Vict. c. 4), enable the “local authorities” under these Acts to supply or aid in the supply of technical instruction. The local authorities under the Acts are, “the council of any county or borough, and any urban sanitary authority within the meaning of the Public Health Acts” (52 & 53 Vict. c. 76, s. 4). It may be inferred from the present subsection that, rightly or wrongly, the Local Board of Health of Woolwich have assumed to act as a local authority under these Acts.

**Markets.**—The saving with regard to markets is required owing to the circumstance that the local board of Woolwich have powers to establish and carry on markets under sects. 166–168 of the Public Health Act, 1875, and the Acts incorporated therewith, while administrative vestries and district boards have no corresponding powers.

Special provision as to Penge.

**Sect. 20.**—(1.) An Order in Council under this Act may either annex Penge to the borough of Lewisham or to the borough of Camberwell, or separate it from the county of London and make it form part of the county of Surrey or of the county of Kent, and if it is so separated shall provide for constituting it an urban district, or for adding it to an adjoining county borough or urban district, and if necessary shall determine the county electoral division to which it is to belong.

(2.) A scheme under this Act shall make such provision as may be necessary for the apportionment and transfer of property and liabilities, and for the repeal of the application to Penge of the Metropolis Management Acts, 1855 to 1893, and any other enactments applying to London, and for the application thereto of the Public Health Acts and other enactments not applying to London.

**Note.—Penge.**—As to the present position of Penge in regard to local government, see the table of areas in the appendix. The chief peculiarity about it is that it is the only area in the administrative county of London comprised in a union (namely, the Croydon union) which is not wholly within that administrative county.

Provision as to Kensington Palace.

**Sect. 21.** An Order in Council under this Act may detach Kensington Palace from the borough of Westminster and attach it to the borough of Kensington.

**Sect. 22.** The places known as the Inner and Middle Temples shall for the purposes of this Act be deemed to be within the city of London.

62 & 63 Vict.  
c. 14, s. 21.  
Provision  
as to the  
Temples.

*Supplemental.*

**Sect. 23.**—(1.) Nothing in this Act shall transfer to Church a borough council any powers or duties of a vestry which affairs and charities. relate to the affairs of the Church or any interest of a vestry in any church property, or shall make any incumbent or churchwarden an ex-officio member of a borough council, and a scheme under this Act shall provide for vesting any such powers and duties in the inhabitants of some parish or ecclesiastical district, and for vesting any such interest in the incumbent and churchwardens or one or some of them, and for the collection of any rate connected with a church or an incumbent by the churchwardens, or by officers appointed for the purpose.

**Note.—Affairs of the Church; Church Rates.**—The powers and duties of elective vestries as to the affairs of the Church, and as to rates connected with a church or with an incumbent, attach to such vestries in almost all cases by transfer from preceding bodies under the Metropolis Management Acts.

By sect. 8 of the Metropolis Management Act, 1855, by which Act the elective vestries were constituted, it was provided that such an elective vestry should be deemed to constitute the vestry of their parish, and should supersede any existing vestry therein, and exercise the powers and privileges held by such existing vestry save as in the Act otherwise provided. And by sect. 90 of the same Act very general provisions, the effect of which has been stated in the note to sect. 4 (1), *ante*, pp. 74, 75, were made for the transfer to the administrative vestries and district boards of powers and duties under local Acts.

These provisions were explained and amended, more especially with regard to church rates and the powers of vestries relating to the affairs of the church, by sects. 1-3 of the Metropolis Management Amendment Act, 1856 (19 & 20 Vict., c. 112), which are as follows:—

Sect. 1. "Where, at the time of the passing of the said Act [*i.e.*, the Metropolis Management Act, 1855] the power of making church rates or rates of the nature of church rates in any parish was vested in any open vestry, or in any meeting in the nature of an open vestry meeting, or in any meeting of the parishioners, inhabitants, or rate-payers generally, or of such of the parishioners, inhabitants, or rate-payers as were rated at or above any specified amount or value (whether such vestry or meeting were holden for the parish at large or for any liberty or other district therein), such power shall not be deemed to have become vested in the vestry constituted in such parish under the said Act, but shall be exercised as if the said Act had not been passed."

62 & 63 Vict.  
c. 14, s. 23  
(1), n.

Sect. 2. "Nothing in the said Act or this Act shall affect or be deemed to have affected any power of electing or appointing churchwardens or making church rates, or other power which, at the time of the passing of the said Act, was vested in such open vestry or meeting as aforesaid, or any elected or other vestry, where such vestry or meeting acts exclusively for any district (by whatever denomination distinguished) created for ecclesiastical purposes only."

Sect. 3. "Save as hereinbefore otherwise provided, all the duties, powers, and privileges (including such as relate to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor,) which might have been performed or exercised by any open or elected or other vestry or any such meeting as aforesaid in any parish, under any local Act, or otherwise, at the time of the passing of the said Act of the last session, shall be deemed to have become transferred to and vested in the vestry constituted by such last-mentioned Act; except so far as any such duties, powers, or privileges may in the case of a parish included in any district mentioned in Sched. B to the said Act be vested by sect. 90 thereof in the board of works of such district: provided that all duties and powers relating to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor, which at the time of the passing of the said Act were vested in or might be exercised by any guardians, governors, trustees, or commissioners, or any body other than any open or elected or other vestry, or any such meeting as hereinbefore mentioned, shall continue vested in and be exercised by such guardians, governors, trustees, or commissioners, or other body as aforesaid."

In *Reg. v. Stretfield* (1863), 32 L. J. M. C. 236; 11 W. R. 736, a rate, called a "composition rate," made under a local Act of 1846 for raising a sum to pay the rector's stipend, and for the repairs and expenses of the church, was held not to be a church rate or rate in the nature of a church rate within sect. 1 of the Act of 1856. And it was further held that the duty of making the rate had been transferred to the elective vestry under the Metropolis Management Acts, from the vestry required to make it under the local Act, although that Act provided for the making of the rate by the churchwardens on default of the vestry.

In *Reg. v. St. George, Southwark, Vestry* (1892), 61 L. J. Q. B. 398; 67 L. T. 412; 56 J. P. 821, the vestry, under an old local Act for the parish, were required to make a rate for the payment of the rector's stipend, of £400 a year; they were further empowered out of the proceeds of the rate to erect a residence for the rector, and until such house was erected were required to pay the rector an extra £80 a year out of the rate. The residence had not been provided. It was held that the duty of making this rate had been transferred to the elective vestry. The question whether the rate was a church rate or rate of the nature of a church rate was however not argued.

In *Reg. v. St. Marylebone Vestry* [1895], 1 Q. B. 771; 64 L. J. Q. B. 622; 72 L. T. 11; it appears to have been assumed that the duty of levying rates under certain local Acts which were principally applicable to building and repairing certain churches and chapels had been transferred to the elective vestry.

The Compulsory Church Rate Abolition Act, 1868 (31 & 32 Vict. c. 109), which in general prohibits any proceedings being taken to enforce the payment of church rates, contains a saving for the raising of church rates to defray debts secured on such rates (*Ib.* s. 4).

and further provides that "this Act shall not affect any enactment in any private or local Act of Parliament under the authority of which church rates may be made or levied in lieu of, or in consideration of, the extinguishment or of the appropriation to any other purpose of, any tithes, customary payments, or other property or charge upon property, which tithes, payments, property, or charge, previously to the passing of such Act, had been appropriated by law to ecclesiastical purposes as defined by this Act, or in consideration of the abolition of tithes in any place, or upon any contract made, or for good or valuable consideration given, and every such enactment shall continue in force in the same manner as if this Act had not passed" (*ib.* s. 5. As to the construction of the section see *Reg. v. St. Marylebone Vestry*, ante, p. 158). There are consequently some cases where church rates or rates in the nature of church rates are still compulsory.

In *Carter v. Cropley* (1857), 8 De G. M. & G. 680; 26 L. J. Ch. 246; 3 Jur. (N.S.) 171; 5 W. R. 248, it was held that the provisions in the Acts of 1855 and 1856 above-mentioned, had not transferred to the elective vestry a right of presentation to a living exercisable by the parishioners of the parish under an old deed of trust under which the advowson was held in trust for the parishioners.

As to the construction of the last mentioned enactments, see further, *A.G. v. Drapers Co.* and *Re Hayle*, cited in the note to sub-sect. (5) *post*, pp. 167, 168, and see also *Taughan v. Imray* (1859) 1 E. & E. 633; 28 L. J. M. C. 78; 5 Jur. (N.S.) 980; 7 W. R. 240; *Reg. v. Rendel* (1861) 1 B. & S. 54; 30 L. J. M. C. 135; 7 Jur. (N.S.) 1072; 9 W. R. 666; decided with reference to the levy of the poor rate and the election of guardians under local Acts.

*Incumbent and Churchwardens.*—The incumbent and churchwardens of a parish for which an elective vestry was constituted under the Metropolis Management Act, 1855, were made *ex officio* members thereof by sect. 2 of that Act. And it is considered that the Local Government Act, 1894, has not effected any change in this respect. Sect. 2 of the Act of 1855 is expressly repealed by the present Act; and that being so the provision in the present sub-section that the incumbent and churchwardens shall not be *ex officio* members of a borough council seems superfluous.

(2.) Provided that any building which belongs to any body whose powers and duties are transferred to any borough council by or under this Act, and which has been erected wholly or partly on a churchyard shall, with its appurtenances, be transferred to and vest in the council, subject to such right of use for church purposes as may be given by the scheme.

(3.) As from the appointed day, the churchwardens of every parish within a metropolitan borough shall cease to be overseers, and references in any Act to the churchwardens and overseers of any such parish shall, except so far as those references relate to the affairs of the church, be construed as references to the council of the borough comprising the parish, and the legal interest in all property vested either in the overseers or churchwardens and overseers of any such parish (other than

62 & 63 Vict.  
c. 14, s. 23  
(3).  
56 & 57 Vict.  
c. 73.

property connected with the affairs of the church or held for an ecclesiastical charity within the meaning of the Local Government Act, 1894), shall, subject to the provisions of any scheme under this Act, vest in the borough council.

**Note.—Churchwardens as ex officio Overseers.**—In a large number of metropolitan parishes the churchwardens have already ceased to be *ex officio* overseers by virtue of orders of the Local Government Board made under sect. 33 of the Local Government Act, 1894. As to which section, see *ante*, pp. 143, 144.

It seems that references to the churchwardens and overseers in an enactment relating to the affairs of the church must in future be read as references to the churchwardens and the borough council. So far as the writer is aware, however, the enactments of the kind are few and unimportant.

**Legal Interest in Parish Property.**—The Poor Relief Act, 1819 (59 Geo. III. c. 12) enabled the churchwardens and overseers of a parish to acquire land and buildings for certain purposes (*lb.* ss. 8, 10, 12),<sup>1</sup> and provided that all buildings, lands, and hereditaments acquired by the churchwardens and overseers under that Act should be assured to the churchwardens and overseers of the parish and their successors, and that such churchwardens and overseers should and might “accept, take, and hold, in the nature of a body corporate, for and on behalf of the parish, all such buildings, lands, and hereditaments, and also all other buildings and hereditaments belonging to such parish” (*lb.* s. 17.)

This enactment has not the effect of constituting the churchwardens and overseers a corporation to all intents and purposes so as to invest them with all the common law attributes of a corporation; it merely places them in the position of a corporation for the specific purposes mentioned. See *Smith v. Adkins* (1841), 8 M. & W. 362; 1 D. (N.S.) 129; 11 L. J. Ex. 83; *Gouldsworth v. Knights* (1843), 11 M. & W. 337; 12 L. J. Ex. 282.

It has the effect of vesting freehold and leasehold lands held for the general benefit of the parish, that is for purposes to which the poor rate or the church rate is applicable, in the churchwardens and overseers, where the trustees, if any, of such lands cannot be found; and it has this effect in the case of land granted to the parish before the passing of the Act. See *Doe d. Jackson v. Hiley* (1830), 10 B. & C. 885; 5 Man. & R. 706; *Doe d. Higgs v. Terry* (1835), 4 A. & E. 274; 5 N. & M. 556; 1 Har. & W. 547; 5 L. J. M. C. 27; *Doe d. Hobbs v. Cockell* (1836), 4 A. & E. 478; *s.c. nom. Doe d. Higgs v. Cockell*, 6 N. & M. 179; 5 L. J. M. C. 81; *Alderman v. Neate* (1839), 4 M. & W. 704; 8 L. J. Ex. 89; 3 Jur. 171; *St. Nicholas, Deptford, Churchwardens, &c. v. Sketchley* (1847), 8 Q. B. 394; 17 L. J. M. C. 17; 12 Jur. 38; *Ex p. Nicholls, Re Hackney Charities* (1864), 34 L. J. Ch. 169; 10 Jur. (N.S.) 941; 11 L. T. 35; 12 W. R. 1129, reversed in C. A. on grounds not affecting the construction of the above enactment, 4 De G. J. & S. 588; 34 L. J. Ch. 176; 11 Jur. (N.S.) 126;

(1) The powers of the churchwardens and overseers for the acquisition of land under these sections were transferred to the guardians by the Union and Parish Property Act, 1835 (5 & 6 Will. IV. c. 69, s. 6), and sects. 8 and 10 of the 59 Geo. III. c. 12, were repealed by the Statute Law Revision Act, 1873.



11 L. T. 758; 13 W. R. 398: see also *Haigh v. West* [1893], 62 & 63 Vict.  
2 Q. B. 19; 62 L. J. Q. B. 532; 69 L. T. 165; 57 J. P. 358. c. 14, s. 23

On the other hand it does not apply to copyhold land (see *A. G. v. (3), n. Lezwin* (1837), 8 Sim. 366; 6 L. J. Ch. 204; 1 Jur. 234; *Re Paddington Charities* (1837), 8 Sim. 629; 7 L. J. Ch. 44; *Doe d. Bailey v. Foster* (1846), 3 C. B. 215; 15 L. J. C. P. 263); nor to land held upon special trusts, such as a trust for the apprenticing of poor boys or the distribution of loaves of bread (see *A. G. v. Lezwin, supra*; *Allason v. Stark* (1838), 1 P. & D. 183; 9 A. & E. 255; 8 L. J. M. C. 13; *Ex p. Nicholls, Re Hackney Charities, ante*, p. 160); nor apparently to land held upon trust for the parish by known trustees (see *St. Nicholas, Deptford, Churchwardens, &c. v. Sketcheley, ante*, p. 160, expressly overruling on this point *Rumball v. Munt* (1846), 8 Q. B. 382; 15 L. J. Q. B. 180; 10 Jur. 539, and also implicitly overruling *Ex p. Annesley* (1836), 2 Y. & C. 350; 6 L. J. Ex. in Eq. 81, and *Doe d. Edney v. Billett* (1845), 7 Q. B. 976; 14 L. J. Q. B. 343; 9 Jur. 662).

The enactment apparently applies to the overseers in townships, &c., where the churchwardens are not *ex officio* overseers (see 59 Geo. III. c. 12, s. 35), but this point does not seem to have been decided.

Orders of the Local Government Board under which churchwardens have ceased to be *ex officio* overseers will generally be found to make provision as to the legal interest in property vested in the churchwardens and overseers.

There are certain enactments, subsequent to the Act of 1819, under which property may be held for particular purposes by the churchwardens and overseers: *e.g.*, the Recreation Grounds Act, 1859 (22 Vict. c. 27).

The exception in the present sub-section with reference to property connected with the affairs of the church or held for an ecclesiastical charity is very difficult to understand. It will be observed that the exception is worded so as to apply, not only where such property is held by the churchwardens and overseers, but also where it is held by the overseers only. Yet, seeing that the borough council are to be the overseers, it is very difficult to see how, in the case of property held by the overseers alone, the legal estate can vest in any persons or body other than the borough council. Where property is at present held for the purposes in question by the churchwardens and overseers, it will apparently under the present Act be held by the churchwardens and the borough council. Cases where the legal interest in property held for these purposes is vested in the churchwardens and overseers, or in the overseers alone, are, however, probably very rare. Indeed, it is difficult to see how the overseers or churchwardens and overseers can be invested with the legal interest in property held for a charity except under a local Act.

### Affairs of the Church; Ecclesiastical Charity.—

Definitions of these expressions are contained in sect. 75 (2) of the Local Government Act, 1894, from which the following extracts containing the definitions of "trustees" and "parochial charity," as well as the definitions of the above expressions, may be conveniently quoted here:—

"In this Act, unless the context otherwise requires—

\* \* \* \* \*

"The expression 'trustees' includes persons administering or managing any charity or recreation ground, or other property or thing in relation to which the word is used.

"The expression 'ecclesiastical charity' includes a charity, the

62 & 63 Vict. c. 14, s. 23 (3), n. endowment whereof is held for some one or more of the following purposes:—

- “(a.) for any spiritual purpose which is a legal purpose; or,
- “(b.) for the benefit of any spiritual person or ecclesiastical officer as such; or,
- “(c.) for use, if a building, as a church, chapel, mission room, or Sunday school, or otherwise by any particular church or denomination; or,
- “(d.) for the maintenance, repair, or improvement of any such building as aforesaid, or for the maintenance of divine service therein; or,
- “(e.) otherwise for the benefit of any particular church or denomination, or of any members thereof as such.

“Provided that where any endowment of a charity, other than a building held for any of the purposes aforesaid, is held in part only for some of the purposes aforesaid, the charity, so far as that endowment is concerned, shall be an ecclesiastical charity within the meaning of this Act: and the Charity Commissioners shall, on application by any person interested, make such provision for the apportionment and management of that endowment as seems to them necessary or expedient for giving effect to this Act.

“The expression shall also include any building which in the opinion of the Charity Commissioners has been erected or provided within forty years before the passing of this Act mainly by or at the cost of members of any particular church or denomination.”

“The expression ‘affairs of the church’ shall include the distribution of offertories or other collections made in any church.”

“The expression ‘parochial charity’ means a charity the benefits of which are or the separate distribution of the benefits of which is confined to inhabitants of a single parish, or of a single ancient ecclesiastical parish divided into two or more parishes, or of not more than five neighbouring parishes.”

The meaning of clause (e) of this definition of “ecclesiastical charity” was considered in the cases of *Re Perry Almshouses* and *Re Ross’ Charity*, which were heard together in the Court of Appeal, [1899] 1 Ch. 21; 68 L. J. Ch. 66; 79 L. T. 366; 47 W. R. 197; 63 J. P. 52.

It was held that a charity might be an ecclesiastical charity as being for the benefit of the members of a particular church or denomination as such, although it was not for their religious benefit, but for their temporal benefit only. On the other hand Lindley, M.R., said: “I think it may be safely said that no eleemosynary charity for the benefit of the members of a particular church or denomination is made an ecclesiastical charity by sect. 75, unless the benefits of the charity are (upon the proper construction of the instrument founding it) confined to members of that particular church or denomination”; though Vaughan Williams, L.J., used language implying some doubt as to whether this proposition is not too strong.

In the first of these cases the founder of the charity conveyed to trustees a piece of land, and ten cottages thereon, upon trust to permit the cottages to be occupied by poor men and women above a certain age, who, *inter alia* “(not being let by sickness or some other urgent cause) shall have attended divine service at the church of the parish of their respective residences for the time being every Sunday for the last five years of their respective lives, and been partakers of the Holy Communion, and lived a godly, righteous, and sober life to the glory of God’s Holy Name.” And it was provided by the deed that the

trustees of the charity should be members of the established church. 62 & 63 Vict. It was held that the benefits of the charity were intended to be c. 14, s. 23 confined to members of the established church, and consequently that (3), n. it was an ecclesiastical charity.

In the other case the proceeds of the charity were to be paid to the churchwardens of a parish for the provision of clothing for six old and poor widows of the parish, the preference to be given to those who, not being disabled, were most constant in their attendance on the public services of the church. It was held that this was not an ecclesiastical charity.

(4.) Provision shall be made by scheme under this Act for substituting nominees of the borough council for overseers as trustees of any charity, due regard being had to the area benefited by the charity.

**Note.—Overseer Trustees.**—It will be observed that the present sub-section is general in its operation; it applies whether the charity is parochial or not, and whether it is ecclesiastical or not.

In some cases nominees of an elective vestry have already been substituted for overseers as charity trustees by orders of the Local Government Board made under sect. 33 of the Local Government Act, 1894 (as to which section see *ante*, pp. 143, 144), conferring on the vestry the powers of a parish council under sect. 14 (2) of that Act, quoted below. Such orders, however, apply only in the case of "parochial" charities within the definition quoted in the note to the preceding section, and are subject to the savings in the Act of 1894, referred to below, in favour of recently founded charities and elementary schools.

(5.) The Charity Commissioners shall, for the purposes of this Act, have the like powers with respect to charities, subject to the like appeal, as they have under and for the purposes of the Local Government Act, 1894.

**Note.—Charities.**—Before discussing the provisions of this sub-section it will be convenient to quote or state the effect of the provisions of the Local Government Act, 1894, as to charities generally, apart from the question whether they confer powers on the Charity Commissioners within the meaning of the present sub-section.

The principal section of the Act of 1894 dealing with charities is sect. 14, which is as follows:—

"(1.) Where trustees hold any property for the purposes of a public recreation ground or of public meetings, or of allotments, whether under Inclosure Acts or otherwise, for the benefit of the inhabitants of a rural parish, or any of them, or for any public purpose connected with a rural parish, except for an ecclesiastical charity, they may, with the approval of the Charity Commissioners, transfer the property to the parish council of the parish, or to persons appointed by that council, and the parish council, if they accept the transfer, or their appointees, shall hold the property on the trusts and subject to the conditions on which the trustees held the same.

"(2.) Where overseers of a rural parish as such are, either alone

62 & 63 Vict. c. 14, s. 23 (5), n. or jointly with any other persons, trustees of any parochial charity, such number of the councillors of the parish or other persons, not exceeding the number of the overseer trustees, as the council may appoint, shall be trustees in their place, and, when the charity is not an ecclesiastical charity, this enactment shall apply as if the churchwardens as such were specified therein as well as the overseers.

“(3.) Where the governing body of a parochial charity other than an ecclesiastical charity does not include any persons elected by the ratepayers or parochial electors or inhabitants of the parish, or appointed by the parish council or parish meeting, the parish council may appoint additional members of that governing body not exceeding the number allowed by the Charity Commissioners in each case; and if the management of any such charity is vested in a sole trustee, the number of trustees may, with the approval of the Charity Commissioners, be increased to three, one of whom may be nominated by such sole trustee and one by the parish council or parish meeting. Nothing in this sub-section shall prejudicially affect the power or authority of the Charity Commissioners, under any of the Acts relating to charities, to settle or alter schemes for the better administration of any charity.

“(4.) Where the vestry of a rural parish are entitled, under the trusts of a charity other than an ecclesiastical charity, to appoint any trustees or beneficiaries of the charity, the appointment shall be made by the parish council of the parish, or in the case of beneficiaries, by persons appointed by the parish council.

“(5.) The draft of every scheme relating to a charity, not being an ecclesiastical charity, which affects a rural parish, shall, on or before the publication of the notice of the proposal to make an order for such scheme in accordance with section six of the Charitable Trusts Act, 1860, be communicated to the council of the parish, and where there is no parish council to the chairman of the parish meeting, and, in the case of a council, the council may, subject to the provisions of this Act with respect to restrictions on expenditure, and to the consent of the parish meeting, either support or oppose the scheme, and shall for that purpose have the same right as any inhabitants of a place directly affected by the scheme.

“(6.) The accounts of all parochial charities, not being ecclesiastical charities, shall annually be laid before the parish meeting of any parish affected thereby, and the Charitable Trusts Amendment Act, 1855, shall apply with the substitution in section forty-four of the parish meeting for the vestry, and of the chairman of the parish meeting for the churchwardens, and the names of the beneficiaries of dole charities shall be published annually in such form as the parish council, or where there is no parish council the parish meeting, think fit.

“(7.) The term of office of a trustee appointed under this section shall be four years, but of the trustees first appointed as aforesaid one half, as nearly as may be, to be determined by lot, shall go out of office at the end of two years from the date of their appointment, but shall be eligible for re-appointment.

“(8.) The provisions of this section with respect to the appointment of trustees, except so far as the appointment is transferred from the vestry, shall not apply to any charity until the expiration of forty years from the date of the foundation thereof, or, in the case of a charity founded before the passing of this Act by a donor or by several donors any one of whom is living at the passing of this Act, until the expiration of forty years from the passing of this Act, unless with the consent of the surviving donor or donors.

"(9.) Whilst a person is trustee of a parochial charity he shall not, 62 & 63 Vict. c. 14, s. 23  
nor shall his wife or any of his children, receive any benefit from the charity." (5), n.

By sub-sect. (2) of sect. 33 of the Act of 1894, by which section the Local Government Board are empowered *inter alia* to confer powers and duties of a parish council upon authorities in London (see *ant.* pp. 143, 144), it is provided that "where it appears to the Local Government Board that, by reason of the circumstances connected with any parish in a municipal borough . . . or other urban district divided into wards, or with the parochial charities of that parish, the parish will not, if the majority of the body of trustees administering the charity are appointed by the council of the borough or district, be properly represented on that body, they may, by their order, provide that such of those trustees as are appointed by the council, or some of them, shall be appointed on the nomination of the councillors elected for the ward or wards comprising such parish or any part of the parish." And by sub-sect. (7) of the same section the Board are to consult the Charity Commissioners before making any order under the section with respect to any charity.

Sect. 66 of the Act of 1894 provides that "nothing in this Act shall affect the trusteeship, management, or control of any elementary school." "Elementary school," it should be mentioned, is defined by sect. 75 of the Act of 1894 as meaning an elementary school within the meaning of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75, s. 3; and see 53 & 54 Vict. c. 22, s. 1).

By sect. 70 (2, 3) of the Act of 1894 it is provided as follows:—  
"(2) If any question arises or is about to arise under this Act as to the appointment of the trustees or beneficiaries of any charity, or as to the persons in whom the property of any charity is vested, such question shall, at the request of any trustee, beneficiary, or other person interested, be determined in the first instance by the Charity Commissioners, subject to an appeal to the High Court brought within three months after such determination. Provided that an appeal to the High Court of Justice from any determination of the Charity Commissioners under this section may be presented only under the same conditions as are prescribed in the case of appeals to the High Court from orders made by the Charity Commissioners under the Charitable Trusts Acts, 1853 to 1891. (3) An appeal shall, with the leave of the High Court or Court of Appeal, but not otherwise, lie to the Court of Appeal against any decision under this section."

The definitions of "parochial charity" and ecclesiastical charity," contained in sect. 75 of the Act of 1894, have been quoted in the note to the preceding sub-section. It will be remembered that the definition of "ecclesiastical charity" incorporates a substantive provision conferring power on the Charity Commissioners in certain cases to apportion the endowment of a charity that is partly ecclesiastical and partly not.

The present sub-section no doubt applies sect. 70 (2, 3) of the Act of 1894 to questions as to charities arising under the present Act. It probably also applies the substantive provisions in sect. 75 of that Act, so as to enable the Charity Commissioners to apportion the endowment of a charity that is partly ecclesiastical and partly not, in cases where such an apportionment is required by reason of any provision in the present Act or in a scheme under it.

It is submitted, however, that the present sub-section cannot be regarded as bringing into force as regards London charities the provisions of sub-sect. (1) or sub-sect. (3) of sect. 14 of the Act of

62 & 63 Vict. 1894, although these sections do incidentally confer powers on the Charity Commissioners.  
c. 14, s. 23  
(5), n.

The provisions of sect. 14 may, however, be applied to London parishes with the necessary modifications by scheme, by virtue of sect. 15 (1, c) of the present Act and sect. 33 of the Act of 1894: see *ante*, pp. 143, 144. And probably such a scheme might, in some cases, by virtue of sub-sect. (2) of sect. 33 of the Act of 1894 provide for the appointment of charity trustees by a borough council on the nomination of councillors for a ward or wards. It is submitted, however, that sub-sect. (7) of sect. 33 will not entitle the Charity Commissioners to be consulted before a provision dealing with a charity is inserted in a scheme under the present Act. It will be remembered also that provisions of sect. 14 have already in some cases been applied in London parishes by orders of the Local Government Board, and that such provisions might be applied after the present Act comes into operation by similar orders. Some observations on the section may accordingly be useful.

Sub-sect. (2) of sect. 14 of the Act of 1894 will, in view of the present sub-section of the London Government Act, cease to have an applicability as to overseer trustees in London. It will, however, continue capable of application as regards churchwarden trustees. In *Re Ross' Charity*, *ante*, p. 162, it was held that the sub-section applies where the churchwardens are trustees of a charity, whether the overseers are also trustees of the charity or not.

As to sub-sect. (3) of sect. 14, it may be observed that the appointment of additional trustees is authorised under the earlier part of the section only where the governing body does not include any "persons" elected by the ratepayers, etc. The use of the word "persons" in the plural is somewhat remarkable; and it may be doubted, notwithstanding the provisions of the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 1), under which, unless the contrary intention appears, words in the plural in modern Acts include the singular, whether the operation of the sub-section is excluded where only one member of the governing body is elected by the ratepayers, etc. The application of the clause, where the charity is not confined to a single parish, is in many cases fraught with great difficulty.

Sub-sect. (4) of sect. 14 will apparently have no applicability in the future in London, since all powers of elective vestries as to non-ecclesiastical charities will pass to the borough councils under sect. 4 (1) of the present Act. See further, *post*, p. 167.

With reference to sub-sect. (6) of sect. 14, it may be mentioned that the inhabitants of a place affected by a scheme made under the Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), do not appear to have any peculiar power to support or oppose it. Under sect. 8 of that Act any two inhabitants of a parish or place to which a charity was specially applicable were, in the case of a charity of which the gross income exceeded £50, empowered to appeal to the Court of Chancery against an order of the Charity Commissioners made for the establishment of a scheme regulating the charity or for certain other purposes. But now by sect. 10 of the Charitable Trusts Act, 1869 (32 & 33 Vict. c. 110), the right of appeal appears to be confined to the Attorney-General or some person authorised by him or by the Charity Commissioners. See *Re Hackney Charities, ex parte Nicholls* (1865) 4 De G. J. & S. 588; 34 L. J. Ch. 169; 11 Jur. (N.S.) 126; 11 L. T. 758; 13 W. R. 398.

With reference to sub-sect. (6) of sect. 14, it should be observed that there is no "parish meeting" except in a rural parish. This

circumstance has been lost sight of in some orders of the Local Government Board under sect. 33 of the Act of 1894. 62 & 63 Vict. c. 14, s. 23.

Sub-sect. (7) of sect. 14, it will be observed, contains no provisions as to the filling of casual vacancies among the trustees. It appears, therefore, that the term of office of a trustee appointed under the sub-section to fill a casual vacancy will be four years, and that the rotation among trustees appointed under the sub-section will consequently gradually become irregular. (5), n.

Sub-sect. (8) of sect. 14 seems to make it clear that the section, so far at all events as it relates to the appointment of charity trustees, applies, subject to the provisions of that sub-section, not only to existing charities, but also to charities founded in future.

An appeal from the Charity Commissioners under the present sub-section will, under sect. 70 (2) of the Local Government Act, 1894, quoted *ante*, p. 165, be subject to the conditions imposed in the case of appeals to the High Court from orders made by the Charity Commissioners under the Charitable Trusts Acts.

Under sect. 8 of the Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), as amended by sect. 10 of the Charitable Trusts Act 1869 (32 & 33 Vict. c. 110) such an appeal can only be presented, except in the case of an order removing an officer of a charity (in which case such officer also has a right of appeal) by the Attorney-General, or by some person authorised by him or by the Charity Commissioners. See *Re Hackney Charities, ex parte Nicholls*, *ante*, p. 166.

The appeal must be brought within three months after the definitive publication of the order of the Charity Commissioners, and must not be brought, except by the Attorney-General, before the expiration of twenty-one days after written notice under the hand of the appellant of the intention to appeal has been delivered to the Charity Commissioners at their office, and has been served on the Attorney-General by delivering the same to the solicitor who acts for him in *ex officio* proceedings relating to charities (23 & 24 Vict. c. 136, s. 8; 32 & 33 Vict. c. 110, s. 11). Security for costs may be required from any appellant other than the Attorney-General (23 & 24 Vict. c. 136, s. 8), and the Attorney-General, or any person authorised by him or by the Charity Commissioners, may appear as respondent (*ib.* s. 9).

In some cases the powers and duties of an elective vestry as to an ecclesiastical charity may be considered to relate to affairs of the church within sub-sect. (1) of the present section. In all other cases it seems that powers and duties of an elective vestry as to charities will pass to the borough council under sect. 4 (1) of the present Act; though alterations of boundary may render it necessary to deal with such powers and duties by scheme.

In this connection it should be observed that it is provided by sect. 91 of the Metropolis Management Act, 1855, that nothing in that Act shall extend to or affect any powers or rights for or in relation to the administration of any charitable trusts, "save that any powers or rights in relation to any such trusts vested, or which would have become vested, in the existing vestry of any parish shall be vested in the vestry of such parish as constituted by this Act."

In some cases powers in relation to an eleemosynary charity may be vested in an elective vestry as the successors of a body other than the previously existing vestry under sect. 3 of the Metropolis Management Amendment Act, 1856 (19 & 20 Vict. c. 112) quoted *ante*, p. 158. In *A. G. v. Drapers Co.* (1858) 4 Drew 299; 27 L. J. Ch. 542; 6 W. R. 357, however, it was held that the right of electing almspeople under the deed of foundation of a charity which vested that right in "the

62 & 63 Vict.  
c. 14, s. 23  
(5), n.

minister, churchwardens, overseers of the poor, and such of the parishioners as should pay taxations to the poor and should not keep inmates or poor lodgers" was not transferred to the elective vestry by that enactment.

In *Re Hayle* (1862), 31 L. J. Ch. 612; 8 Jur. (N. S.) 810; 7 L. T. 18; 10 W. R. 577, it was held that where the right to appoint charity trustees was, by a decree of the Court of Chancery of earlier date than 1855, given to the parishioners and inhabitants in vestry assembled, the right was transferred to the elective vestry; and in view of the provisions of sect. 91 of the Act of 1855 above mentioned it is difficult to see how the contrary could have been seriously contended.

(6.) Nothing in this Act shall affect the right to the benefit of any charity, or shall alter or confer any power of altering the defined charitable purposes (if any) to which any property is by law applicable at the passing of this Act.

Mayors of  
boroughs as  
justices of  
the peace.

**Sect. 24.** With respect to a mayor of a borough being by virtue of his office a justice of the peace—

- (1) he shall become a justice of the peace for the county of London;
- (2) he shall not be disqualified by reason of being a solicitor practising or carrying on business in the county of London or city of London;
- (3) he shall not practise as a solicitor before any justices of the county of London.

**Note.—Mayor as Justice of the Peace.**—The mayor of a metropolitan borough will be a justice of the peace by virtue of the extension to such a mayor by sect. 2 (4) of the present Act of sect. 2 (5) of the Local Government Act, 1888, under which the chairman of a county council is ex-officio justice of the peace.

That section provides with respect to the chairman of a county council, that "he shall, by virtue of his office, be a justice of the peace for the county; but before acting as such justice he shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace other than the oath respecting qualification by estate."

These oaths are, under the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72, s. 6), the oath of allegiance and the judicial oath.

The oath of allegiance is as follows:—"I — do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me God." (*Ib.* s. 2.)

The judicial oath is as follows:—"I — do swear that I will well and truly serve our Sovereign Lady Queen Victoria, in the office of —, and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill-will. So help me God." (*Ib.* s. 4.)

By sect. 11 of the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), it is, however, provided that "When an oath is required to be taken under this Act, every person for the time being by law permitted to make a solemn affirmation or declaration instead of taking an oath may, instead of taking such oath, make a solemn affirmation in the form of the oath hereby appointed, substituting the words 'solemnly,



sincerely, and truly declare and affirm' for the word 'swear,' and 62 & 63 Vict. omitting the words 'So help me God.'" By virtue of the Interpretation Act, 1889 (52 & 53 Vict. c. 63 s. 3), moreover, the word "oath" in the Act of 1888 includes an affirmation in the case of such persons.

By the Promissory Oaths Act, 1871 (34 & 35 Vict. c. 48, s. 2), the oaths are to be taken before such persons as Her Majesty may from time to time appoint; or before the Lord Chamberlain; or in open court in the High Court of Justice; or in open court at the quarter sessions for the county.

It appears that if the mayor of a metropolitan borough is re-elected at the expiry of his term of office he will have to take the oaths over again before acting as a justice of the peace, there being no provision like that applicable to the chairman of a district council (59 & 60 Vict. c. 22) dispensing with his so doing.

The mayor of a municipal borough is a justice of the peace by virtue of his office not only during his year of office, but, in general, for the succeeding year also, under sect. 155 of the Municipal Corporations Act, 1882. But the provisions of this section are not extended to the chairman of a county council (51 & 52 Vict. c. 41, s. 75), and will consequently not apply to the mayor of a metropolitan borough.

Sub-sect. (2) prevents the Justices Qualification Act, 1871 (34 & 35 Vict. c. 18), under which a solicitor is disqualified for becoming or being a justice of the peace for any county in which he practises, from applying to the mayor of a metropolitan borough.

The sub-section seems to show by implication that the provisions of the Bankruptcy Acts (46 & 47 Vict. c. 52, s. 32; 53 & 54 Vict. c. 71, s. 9), under which bankrupts are disqualified from acting as justices; and the provisions of the Sheriffs Act, 1887 (50 & 51 Vict. c. 55, s. 17), under which the sheriff of a county is disqualified from acting as justice for his county, will apply to the mayor of a metropolitan borough.

**Sect. 25.** In case of the illness or absence of the Deputy town clerk, the borough council may appoint a deputy town clerk to hold office during their pleasure, and all things required or authorised by law to be done by or to the town clerk may be done by or to the deputy town clerk, and no defect in the appointment of a deputy shall invalidate his acts.

**Sect. 26.—(1.)** Whenever the Local Government Board is satisfied that a *prima facie* case is made out for a proposal for the alteration of the number of wards of a metropolitan borough, or of the boundaries of any ward, or of the apportionment of the members of the council among the wards, the Local Government Board may cause such inquiry to be made and such notices to be given as they may think expedient; and if satisfied that the proposal is desirable, may make an order accordingly.

**Note.—Wards.**—The number and boundaries of the wards of a metropolitan borough, and the number of councillors to be elected

62 & 63 Vict. for each ward are in the first instance to be determined by order in  
c. 14, s. 26 council under sect. 2 (2).  
(1), n.

(2.) Notice of the provisions of the order shall be given, and copies thereof shall be supplied, in such manner as the Local Government Board may direct.

(3.) The expenses of and incidental to the making of the order shall be paid by the borough council.

Provisions as to names, first elections, etc. **Sect. 27.**—(1.) An Order in Council under this Act shall—

(a) give each of the metropolitan boroughs an appropriate name; and

(b) fix the days, years, and times for the retirement of the first aldermen and councillors; and

(c) give such directions as to the first meeting of the borough councils, and make such other temporary modifications of the provisions of this Act, as may appear to Her Majesty to be necessary or proper for making those provisions applicable in the case of the first constitution of a borough council.

(2.) An Order in Council under this Act may make such provisions as appear necessary for adapting the enactments relating to the registration of electors to the provisions of this Act with respect to the powers and duties of the town clerk and overseers, and in particular for applying, so far as appears necessary, the law regulating the registration of electors in a municipal borough outside London.

**Note.—Registration of Electors.**—The provisions of the present Act as to the powers and duties of the town clerk and overseers in connection with the registration of electors are contained in sect. 4 (1), whereby it is provided that the clerk of the council of the metropolitan borough shall be called the town clerk, and shall be the town clerk within the meaning of the Acts relating to the registration of electors, and in sect. 11 (1), whereby it is provided that the town clerk of each borough shall have the powers and duties and be subject to the liabilities of the overseers with respect to the preparation of lists of voters.

(3.) An Order in Council under this Act shall provide for the revised lists of voters in the administrative county of London outside the city being, in the year one thousand nine hundred, printed and signed before the twentieth day of October, and coming into operation as the register for the purpose of borough elections on the first day of November, and may provide for such adjustment of the lists of voters and registers with respect to any alteration

under this Act of parish boundaries as may appear required for the purpose of those elections.

62 & 63 Vict.  
c. 14, s. 27  
(3).

**Note.—Coming into Operation of Register.**—A provision similar to the present section is made as regards years subsequent to 1900 by sect. 3 (4).

(4.) On the day on which the first borough councillors elected under this Act come into office, the persons who are then members of elective vestries or district boards, and the auditors and overseers of any place to be included in a borough, shall cease to hold office, and until that day the persons who are at the passing of this Act members of elective vestries and district boards, and auditors and overseers, shall continue in office as if the term of office for which they were elected or appointed expired on that day, and, except for the purpose of filling casual vacancies, no further election or appointment shall be held or made.

**Sect. 28.**—(1.) Sections two hundred and ninety-seven and two hundred and ninety-eight of the Public Health Act, 1875, shall apply to any Provisional Order made under this Act as if it were a Provisional Order made under that Act, except that the expenses incidental to the Provisional Order shall be defrayed by the councils concerned in such proportions as the Local Government Board may determine.

Provisional  
Orders and  
proceedings  
of Local  
Government  
Board.  
38 & 39 Vict.  
c. 55.

**Note.—Provisional Orders.**—Sects. 297 & 298 of the Public Health Act, 1875, are as follows:—

Sect. 297. “With respect to provisional orders authorized to be made by the Local Government Board under this Act, the following enactments shall be made:—

- “(1.) The Local Government Board shall not make any provisional order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates:
- “(2.) Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject-matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections:
- “(3.) The Local Government Board may submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever, unless and until it is confirmed by Parliament:
- “(4.) If while the Bill confirming any such order is pending in

62 & 63 Vict.  
c. 14, s. 28  
(1), n.

either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to such order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills :

- “(5.) Any Act confirming any provisional order made in pursuance . . . of this Act . . . may be repealed altered or amended by any provisional order made by the Local Government Board and confirmed by Parliament :
- “(6.) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the order is pending in either House of Parliament :
- “(7.) The making of a provisional order shall be *prima facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with :
- “(8.) Every Act confirming any such provisional order shall be deemed to be a public general Act.

Sect. 298. “The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly ; and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs.”

Provisional orders may be made under sect. 5 of the present Act for the transfer of functions from the London County Council to the borough councils, or *vice versa*, and for the transfer of functions from the London County Council to the Common Council of the City, or *vice versa*.

Provisional orders may also be made for authorizing the council of a metropolitan borough to acquire land compulsorily by virtue of the extension, under sect. 5 (2) and Sched. II., Part II., to such councils of the enactments enabling county councils to acquire land.

(2.) Sub-sections one and five of section eighty-seven  
51 & 52 Vict. of the Local Government Act, 1888, shall apply to any  
c. 41. proceedings of the Local Government Board under or for  
the purposes of this Act.

**Note.—Proceedings of Local Government Board.**—  
Sub-sects. (1) and (5) of sect. 87 of the Local Government Act, 1888, are as follows :—

Sub-sect. (1). “Where the Local Government Board are authorized by this Act to make any inquiry, to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, sanction, or approval to any matter, or otherwise to act under this Act, they may cause to be made a local inquiry, and in that case, and also in a case where they are required by this Act to cause to be made a local inquiry, sects. 293 to 296, both inclusive, of

the Public Health Act, 1875, shall apply as if they were herein re-enacted, and in terms made applicable to this Act. 62 & 63 Vict. c. 14, s. 28

Sub-sect. (5). "Where the Board cause any local inquiry to be held under this Act, the costs incurred in relation to such inquiry, including the salary of any inspector or officer of the Board engaged in such inquiry, not exceeding three guineas a day, shall be paid by the councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Board may direct, and the Board may certify the amount of the costs incurred, and any sum so certified and directed by the Board to be paid by any council or authority shall be a debt to the Crown from such council or authority." (2), n.

The provisions of the Public Health Act, 1875, incorporated with sect. 87 (1) of the Local Government Act, 1888, are as follows:—

Sect. 293. "The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction approval or consent is required by this Act."

Sect. 294. "The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law [now the High Court] on the application of any person named therein."

Sect. 295. "All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct."

Sect. 296 relates to the powers of the inspectors of the Local Government Board. It has been set out in the note to sect. 15 (3), *ante*, p. 138.

As to the finality of orders of the Local Government Board under sect. 295, reference may be made to *Ex p. Bird* (1859), 1 E. & E. 931; 28 L. J. Q. B. 223; 5 Jur. (N.S.) 1009; 7 W. R. 476; 23 J. P. 691, and *Fenwick v. Groydon Union* [1891], 2 Q. B. 216; 60 L. J. M. C. 161; 65 L. T. 645; 40 W. R. 124; 55 J. P. 470.

(3.) Where the Local Government Board are authorised by this Act to determine any matter, it shall be at their option to determine the matter as arbitrators or otherwise, and, if they elect to determine the matter as arbitrators, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted and in terms made applicable to the Local Government Board and the determination of matters under this Act. 31 & 32 Vict. c. 119.

**Note. — Determination of Questions by Local Government Board.**—The great distinction between the position of the Local Government Board, where they determine questions as arbitrators and where they determine questions otherwise than as arbitrators, is that in the former case they are subject to the control of

62 & 63 Vict.  
c. 14, s. 28  
(3). n.

the Court as other arbitrators are, so that, for example, they may be compelled to state a case for the High Court (see *Re Kent County Council and Sandgate Local Board* [1895], 2 Q. B. 43; 64 L. J. Q. B. 502; 72 L. T. 725; 43 W. R. 601; 59 J. P. 456), and no doubt their award might be set aside for reasons similar to those on which the Court will set aside the award of an ordinary arbitrator, while where they act otherwise than as arbitrators, they are free from any such control.

The provisions of the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), applied by the present sub-section, are as follows:—

Sect. 30. "Whenever the Board of Trade are required to make any award or to decide any difference in any case in which a company is one of the parties, they may appoint an arbitrator to act for them, and his award or decision shall be deemed to be the award or decision of the Board of Trade.

"If the arbitrator dies, or in the judgment of the Board of Trade becomes incapable or unfit, the Board of Trade may appoint another arbitrator."

Sect. 31. "The Board of Trade may fix the remuneration of any arbitrator . . . appointed by them . . . and may, if they think fit, frame a scale of remuneration for arbitrators . . . so appointed by them, and no arbitrator . . . so appointed by them shall be entitled to any larger remuneration than the amount fixed by the Board of Trade."

Sect. 32. "The provisions of sects. 18–29, both inclusive, of the Railway Companies Arbitration Act, 1859, shall, so far as is consistent with the tenor thereof, apply to an arbitrator appointed by the Board of Trade, and to his arbitration and award . . . and in construing those sections for the purpose of this Act, the word 'companies' shall be construed to mean the parties to the arbitration."

The sections of the Railway Companies Arbitration Act, 1859 (22 & 23 Vict. c. 59), mentioned in sect. 32 of the Act of 1868, omitting words and passages that will clearly have no application to an arbitration by the Local Government Board under the London Government Act, are as follows:—

Sect. 18. "The arbitrator . . . may call for the production of any documents or evidence in the possession or power of the companies respectively, or which they respectively can produce, and which the arbitrator . . . shall think necessary for determining the matters referred, and may examine the witnesses of the companies respectively on oath, and may administer the requisite oath . . ."

Sect. 19. "Except where and as the companies otherwise agree, the arbitrator . . . may proceed in the business of the reference in such manner as he . . . shall think fit."

Sect. 20. "The arbitrator . . . may proceed in the absence of all or any of the companies in every case in which, after giving notice in that behalf to the companies respectively, the arbitrator . . . shall think fit so to proceed."

Sect. 21. "The arbitrator . . . may, if he . . . think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred; and every such award on part of the matters shall for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on."

Sect. 22. "The award of the arbitrator . . . if made in writing 62 & 63 Vict. under his . . . hand . . . and ready to be delivered to the companies c. 14, s. 28 within such a time as the companies agree on, or, failing such agree- (3), n. ment, within thirty days next after the matters in difference are referred to . . . the arbitrator . . . shall be binding and conclusive on all the companies."

Sect. 23. "Provided always, that (except where and as the companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made; and if it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period."<sup>1</sup>

Sect. 24. "No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality."

Sect. 25. "Except only so far as the companies bound by any award in accordance with this Act from time to time otherwise agree, all things by every award in accordance with this Act lawfully required to be done, omitted, or suffered, shall be done, omitted, or suffered accordingly."

Sect. 26. "Full effect shall be given by all superior Courts of Law and Equity in the United Kingdom, according to their respective jurisdiction, and by the companies respectively, and otherwise, to all agreements, references, arbitrations, and awards in accordance with this Act; and the performance or observance thereof may, where the Courts think fit, be compelled by distress infinite on the property of the companies respectively, or by any other process against the companies respectively on their respective property that the Courts or any Judge thereof shall direct."<sup>2</sup>

Sect. 27. "Except where and as the companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator . . ."

Sect. 28. "Except where and as the companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the companies in equal shares, and in other respects the companies shall bear their own respective costs."

Sect. 29. "The submission to any arbitration in accordance with this Act may at any time be made a rule of any of Her Majesty's superior Courts of Record at Westminster . . . on the application of any party interested: and the Court may remit the matter to the arbitrator . . . with any directions the Court think fit."

The taxation of costs in case of an arbitration under the Regulation of Railways Act, 1868, was specially provided for by sect. 33 of

(1) The Railway Companies Arbitration Act, 1859, contemplates the appointment either of a single arbitrator or of two or more arbitrators and an umpire. Most of the powers given by the sections of the Act above set out are expressed to be given to "the arbitrator or the arbitrators and the umpire respectively." Since in the case of an arbitration by the Board of Trade under the Act of 1868, or by the Local Government Board under the London Government Act, there can be but one arbitrator, the words referring to several arbitrators and to the umpire have been omitted in setting out the sections of the Act of 1859. Whether sect. 23, which in terms refers to the umpire only, is to be regarded as applied to the arbitrator appointed by the Board of Trade or the Local Government Board is not clear.

(2) The remaining words of the section were repealed by the Statute Law Revision Act, 1881.

62 & 63 Vict.  
c. 14, s. 28  
(3), n.

that Act. That section was repealed by sect. 2 of the Lands Clauses Consolidation Act, 1869 (32 & 33 Vict. c. 18), and replaced by sect. 1 of that Act. Sect. 1 of the Act of 1869 has in its turn been repealed and replaced by the Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11), whereby it is provided that "Where under the Lands Clauses Consolidation Act, 1845, or any Act incorporating the same, any question of disputed compensation is to be determined . . . by arbitration, the costs of and incidental to . . . the arbitration and award . . . shall, if either party so requires, be taxed and settled as between the parties by one of the masters of the Supreme Court, and such fees shall be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be taken in the offices of those masters; and all those enactments (including the enactments relating to the taking of fees by means of stamps) shall extend to the fees in respect of such taxation."

It is no doubt difficult to see how an arbitration under the Act of 1868 can be brought within the terms of this enactment; but it seems quite clear from the course of legislation that the enactment is intended to apply to such arbitrations.

The Arbitration Act, 1889 (52 & 53 Vict. c. 49), will apply to arbitrations by the Local Government Board under the present Act so far as it is consistent with the present Act and the enactments above referred to (see *Ib.* s. 24).

Proceedings  
in case of  
doubts as to  
transfer of  
powers.

**Sect. 29.** If any question arises, or is about to arise, as to whether any power, duty, or liability is or is not transferred by or under this Act to the council of any metropolitan borough, or any property is or is not vested in any such council, that question, without prejudice to any other mode of trying it, may, on the application of the council, be submitted for decision to the High Court in such summary manner as, subject to any rules of court, may be directed by the court; and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question.

**Note.—Application to High Court.**—Provisions very similar to the present section are contained in sect. 29 of the Local Government Act, 1888, and sect. 70 of the Local Government Act, 1894.

Under sect. 29 of the Act of 1888 it was held in *Re Kent County Council and Dover Corporation* [1891], 1 Q. B. 725; 60 L. J. Q. B. 435; 65 L. T. 213; 39 W. R. 465; 55 J. P. 647; that the jurisdiction of the Court was consultative only, and consequently that there was no appeal from the decision of the Court to the Court of Appeal.

Sect. 70 of the Act of 1894 expressly provides for an appeal to the Court of Appeal, but that provision is not repeated in the present section.

The Court have under the enactments above mentioned entertained questions that cannot be regarded as falling very strictly within the category of questions as to whether functions were or were not transferred to particular authorities. See *e.g.*, *Marlborough Corporation v. Wilts County Council* (1894), 58 J. P. 213. In the most recent reported case of the kind (*Re Auckland Rural District Council and*



*Spennymoor Urban District Council*, Loc. Gov. Chron., 1898, 1069), 62 & 63 Vict. however, which was brought before the Court under sect. 70 (1) of C. 14. c. 27, n. the Act of 1894, the Court, while deciding that a certain liability had been transferred to an urban authority, declined to answer a question as to the funds out of which the liability should be defrayed, on the ground that that question did not come within the scope of the section. The Court has also refused to answer questions under the enactments in question on the ground that they were abstract questions as to the construction of statutes, not arising out of specific facts brought before the Court: see *Re Cardigan County Council* (1890), 54 J. P. 792; see also *Re Salop County Council* (1891), 65 L. T. 416; 56 J. P. 213.

The procedure under the above-mentioned enactments has been regulated by Rules of Court dated August 10, 1892, December 10, 1894, and April 6, 1895. Under these rules the procedure is by special case, which is put into the Crown Paper for argument. A similar rule will doubtless be made under the present section.

Before the rules under the Act of 1888 were made it was held in *ex p. Staffordshire (Chairman of Quarter Sessions)*, W. N. 1889, p. 183, that the proper course was to make an application for an order to set down for hearing a case stated under sect. 29 of that Act in Court and not at chambers.

**Sect. 30—**(1.) Where the powers and duties of any Existing authority are transferred by or under this Act to any officers, borough council, the existing officers of that authority shall be transferred to and become the officers of that council. Any assistant overseers, rate collectors, and other officers employed in the performance of duties of overseers within a borough shall also be transferred to and become officers of the council for that borough. The council may abolish the office of any such officer whose office they may deem unnecessary; but any officer required to perform duties such as are not analogous, or which are an unreasonable addition to those which he is at present required to perform, may relinquish his office, and any officer so relinquishing his office, or whose office is abolished, shall be entitled to compensation under this Act.

**Note.—Officers.**—It will be convenient in the notes to the present section to make some observations, not only with reference to the existing officers, who will be transferred to the borough councils under the present section, but also with reference to the appointment of officers by the borough councils in the future.

The most general power of appointing officers that the council of a Metropolitan borough will have will be under sect. 62 of the Metropolitan Management Act, 1855, which provides that, subject to the provisions of that Act, every district board and administrative vestry "shall respectively appoint or employ, or continue for the purposes of this Act, and may remove at pleasure, such clerks, treasurers, and surveyors, and such other officers and servants as may be necessary, and may allow to such clerks, treasurers, surveyors, officers, and

62 & 63 Vict. c. 14, s. 30 (1), n. servants respectively, such salaries and wages as the board or vestry may think fit."

The words in this enactment "for the purposes of this Act" appear to be confined to the continuance of existing officers. And if so, the enactment applies generally to the appointment of officers by administrative vestries and district boards, not only for the purposes of the Metropolis Management Acts, but also for the purposes of other Acts conferring powers and imposing duties on those bodies, and not containing special provisions with regard to the appointment of officers.

It is submitted, however, that the enactment will apply to the appointment of officers by a borough council only so far as those officers are appointed for the purposes of Acts under which the council act as successors of the administrative vestries and district boards. For example, it is submitted that it would not apply to the appointment of an officer exclusively for the purpose of enforcing the byelaws and regulations as to milk under sect. 6 (4) of the present Act.

The question whether a borough council have power to appoint an officer under the section or not is of little direct importance, since, in the absence of express power, a local authority must clearly be taken to have implied power to appoint such officers as are required to enable them to exercise their functions. But it may, in various ways, become a question of some importance whether an officer has been appointed under sect. 62 of the Act of 1853, or by virtue of some other power of a borough council.

Officers appointed under sect. 62 of the Act of 1855 hold office strictly at pleasure by the terms of the section, and the borough council will be unable to bind themselves to give such an officer any notice whatever before dismissing him. See *Reg. v. Darlington School Governors* (1844), 6 Q. B. 682; 14 L. J. Q. B. 67. But there is no reason why the council should not require such an officer to undertake to give them notice before resigning.

How far a local authority can bind themselves to give notice to their officers, or otherwise give their officers any degree of fixity of tenure of office, in the absence of express provision on the point, seems a very doubtful question.

Sect. 63 of the Act of 1855 provides that no person holding the office of clerk to an administrative vestry or district board, nor his partner, nor any person in the service or employ of them, or either of them, shall hold, be eligible to, or in any manner assist or officiate in the office of clerk; and that neither the person holding the office of clerk, nor his partner, nor any person in the office or employ of either of them, shall hold, be eligible to, or in any manner assist in the office of treasurer; and the section imposes a penalty recoverable by action for a breach of these provisions. There can be little doubt that this section could be held to extend to the offices of town clerk and treasurer in a metropolitan borough.

Sect. 64 of the Act of 1855 provides that "No officer or servant . . . of any district board or any such vestry [*i.e.* any administrative vestry], shall be in anywise concerned or interested in any contract or work made with or executed for such board or vestry; and if any such officer or servant be so concerned or interested, or, under colour of his office or employment, exact, take or accept any fee or reward whatsoever, other than his proper salary, wages, and allowances, he shall be incapable of afterwards holding or continuing in any office or employment under such board or vestry, and shall forfeit and pay the sum of fifty pounds, which may be recovered by any person, with full costs of suit, in any of the superior courts of law: provided that no

person, being a shareholder of any joint stock company, shall be 62 & 63 Vict. prevented from being employed as an officer or servant by reason of c. 14, s. 30 any contract between such company and such board or vestry, or of (1), n. any work executed by such company."

It is submitted that this section will, like sect. 62, have only a limited application in the case of officers appointed by or transferred to the council of a metropolitan borough. For example, it is submitted that it will not apply to an assistant overseer transferred to a borough council by the present sub-section, or to an officer appointed by a borough council to assist the overseers under sect. 11 (1) of the present Act, or to an officer appointed either before or after the appointed day under any of the adoptive Acts.<sup>1</sup>

Many Acts relating to local government contain provisions similar to those of sect. 64 of the Metropolis Management Act, 1855.

In *Weidnesbury Local Board v. Stevenson* (1863) 27 J. P. 741, it seems to have been held that an officer of a local authority who was patentee of a certain kind of brick used by the authority, and who received a commission from the manufacturer on the sale of the bricks to the authority, was not brought within the scope of a provision of the kind in the Public Health Act, 1848 (11 & 12 Vict. c. 63, s. 38). It may, however, be doubted if this view would now be taken, particularly as the actual decision in the case could be supported on totally different grounds.

In *Burgess v. Clark* (1884) 14 Q. B. D. 735; 33 W. R. 269; 49 J. P. 388, it was held under the corresponding section of the Public Health Act, 1875 (38 & 39 Vict. c. 55, s. 193), that an officer of a local authority had rendered himself liable to penalties by letting rooms to the authority. And in *Todd v. Robinson* (1884) 14 Q. B. D. 739; 54 L. J. Q. B. 47; 52 L. T. 120; 49 J. P. 278, a similar decision was given in the case of an officer who was a shareholder in a gas company supplying gas to the local authority. Now, however, special provision with reference to the interest of officers of local authorities under the Public Health Act, 1875, in contracts of the kind in question in these cases is made by the Public Health (Members and Officers) Act, 1885 (48 & 49 Vict. c. 53).

The Act of 1885 does not apply to officers of local authorities in London; but it will be observed that sect. 64 of the Act of 1855 itself contains an exception in favour of officers interested in contracts as shareholders in joint stock companies.

In *Whiteley v. Barley* (1888) 21 Q. B. D. 154; 57 L. J. Q. B. 643; 60 L. T. 87; 36 W. R. 823; 52 J. P. 595, the defendant, the surveyor to a town council, was, by the terms of a contract entered into by the council acting under the Public Health Act, 1875, to receive from the contractors, in respect of bills of quantities to be prepared by him, percentages on the amounts he should certify to be due to the contractors from the council. The council also appointed the defendant, apart from his ordinary duties, to superintend the construction of certain works as their engineer, and agreed to remunerate him by a percentage on the outlay. It was held that the defendant was liable to penalties under sect. 193 of the Public Health Act, 1875, above referred to, in respect of both transactions. Subsequently, it may be mentioned the town council issued orders to their treasurer to pay the commission of the defendant in the last case, and also to pay him the

(1) A very similar provision is, it may be mentioned, made as regards officers appointed under the Baths and Washhouses Acts by sect. 39 of the Baths and Washhouses Act, 1846 (9 & 10 Vict. c. 74).

62 & 63 Vict. c. 14, s. 30 (1), n. costs of the action brought against him for penalties. These orders were quashed by the Court (*Reg. v. Ramsgate Corporation* (1889) 23 Q. B. D. 66; 58 L. J. Q. B. 352; 61 L. T. 333; 37 W. R. 781; 53 J. P. 740); and the members of the council who voted in favour of defending the orders in question were subsequently ordered personally to pay the costs of the person at whose instance they were quashed (*Reg. v. Faile* (1889) 23 Q. B. D. 483; 54 J. P. 134, s. c. nom. *Reg. v. Whiteley* 58 L. J. M. C. 164; 61 L. T. 253).

On the other hand, in *Edwards v. Salmon* (1889), 23 Q. B. D. 531; 58 L. J. Q. B. 571; 38 W. R. 166; 54 J. P. 180, it was held that sect. 193 of the Public Health Act, 1875, does not prevent an officer of a local authority from receiving extra remuneration for work outside the scope of his ordinary duties.

In *Melliss v. Shirley and Freemantle Local Board* (1885), 16 Q. B. D. 446; 55 L. J. Q. B. 143; 53 L. T. 810; 34 W. R. 187; 50 J. P. 214, it was held that a contract entered into between an officer of a local authority and the authority contrary to sect. 193 of the Act of 1875 was wholly void; and an opinion was expressed that if the officer became interested in the contract after it was made, though the contract would not be void, the officer would forfeit any benefit under it.

The language used in the judgments in that case is wide enough to support the proposition that any contract of a local authority under the Public Health Act in which an officer of the authority is interested at its inception is void. It is, however, submitted that this cannot be so. It would be outrageous if a contract of a local authority, involving perhaps hundreds of thousands of pounds, were to be held void because some subordinate officer of the authority had some trifling interest in it, analogous to that of a shareholder in a company in the contracts of the company: a circumstance that might have escaped the attention, and possibly even the knowledge, both of the authority and the contractors.

Sect. 65 of the Metropolis Management Act, 1855, provides that before any officer or servant appointed by an administrative vestry or district board enters upon any office or employment under that Act, by reason whereof he will or may be entrusted with the custody or control of money, the board or vestry shall require and take from him such security for the faithful execution of such office or employment, and for duly accounting for all monies which may be entrusted to him by reason thereof as they may think sufficient. And the same section contains elaborate provisions as to the rendering of accounts by such officers, and gives a summary remedy against an officer failing to account or to deliver over money or property of the vestry or board in his possession.

The operation of this section appears clearly to be confined to officers appointed for the purposes of the Metropolis Management Acts. There is, however, of course nothing to prevent the council of a metropolitan borough from requiring officers appointed for the purposes of other Acts to give security if they think fit.

The Superannuation (Metropolis) Act, 1866 (29 Vict. c. 31), empowers "the vestry of any parish and district board of any district or any other parochial body within the metropolis" at their discretion to grant to any officer in their respective services superannuation allowances upon the conditions laid down in the Act, and not exceeding the scale thereby prescribed. See *Reg. v. St. Pancras Vestry* (1890), 24 Q. B. D. 371; 59 L. J. Q. B. 244; 62 L. T. 440; 38 W. R. 311; 54 J. P. 389.

"Parochial body" is defined in sect. 8 of the Act as meaning "all

trustees, overseers, and others who make the several rates for the purposes of the vestry or the district board of any district." 62 & 63 Vict. c. 14, s. 30

The Act is extended to officers and servants appointed in the metropolis under the Baths and Washhouses Acts by sect. 12 of the Baths and Washhouses Act, 1878 (41 Vict. c. 14). (1), n.

This Act will apply to officers appointed by the borough councils as successors of the vestries and district boards, and it will also apply to officers appointed by them in their capacity of overseers, and to officers appointed by them under the Baths and Washhouses Acts. It is submitted, however, that it will not apply to all officers of borough councils: for example, it is submitted that it would not apply to officers appointed either before or after the appointed day under the Public Libraries Acts.

The questions arising as to the applicability of the general enactments concerning officers of vestries and district boards to officers of borough councils are of great difficulty, and the views above expressed are not expressed with any very great confidence. In support of them the following considerations may be suggested. Though the bulk of the powers and duties that will attach to the borough councils will attach by transfer from the vestries and district boards, powers and duties will also attach to them by transfer from other authorities, *e.g.* authorities under the adoptive Acts. And in point of law there seems to be no difference between the effect of a transfer of power from an administrative vestry to a borough council, and the effect of a transfer of powers from, say, a burial board to a borough council. It is obvious that special provisions as to officers of burial boards are not applied to all the officers of a borough council by the transfer to them of the powers of a burial board. And logically precisely similar reasons seem to show that special provisions as to officers of an administrative vestry are not applied to officers of a borough council generally by the transfer to that council of the powers of such a vestry.

It might perhaps be argued that the provisions as to the officers of an administrative vestry are applied to the officers of a borough council generally by sect. 2 (5) of the present Act: but this argument, even if it would otherwise be tenable, seems to be conclusively negatived by the fact that the provisions in question are not, like provisions as to the procedure, &c., of administrative vestries and district boards, expressly repealed as to the latter bodies by the present Act.

Some observations may now be made with reference to particular officers.

**Vestry Clerks and Clerks of Vestries.**—As has been seen, an administrative vestry have power to appoint clerks under sect. 62 of the Metropolis Management Act, 1855.

A clerk appointed by an administrative vestry under this enactment is properly known as "clerk of the vestry," but not as "vestry clerk." The office of "vestry clerk" is a different office altogether, held under the Vestry Clerks Act, 1850, or in some cases under a local Act of more or less similar scope.

The Vestry Clerks Act, 1850 (13 & 14 Vict. c. 57), enabled the Poor Law Board to make an order as regards any parish with a population according to the preceding census exceeding 2000, authorizing the appointment of a paid "vestry clerk" for the parish.

The powers of the Poor Law Board under the Act are now of course vested in the Local Government Board.

When an order authorizing the appointment of a vestry clerk is

62 & 63 Vict.  
c. 14, s. 30  
(1), n.

made, a vestry clerk is to be appointed by the vestry within one month after the order is made and published, and subsequent appointments are to be made within one month after the occurrence of the vacancy in the office. Special notice of the meeting at which the appointment is to be made is required. (13 & 14 Vict. c. 57, s. 6.)

Sects. 6 and 7 of the Vestries Act, 1850, provide that it shall be the duty of a vestry clerk appointed under the Act, besides performing any duties imposed by statute on vestry clerks, unless otherwise directed by the Poor Law Board (now the Local Government Board):—

“To give notice of and attend the meetings of vestry and committees appointed thereat:

“To summon and attend meetings of the churchwardens and overseers, when required, and to enter the minutes thereof respectively:

“To keep the account of all charity monies which the churchwardens or overseers are authorized or are accustomed to distribute:

“To keep the vestry books, and the parish deeds and documents, and the rate books and accounts which are closed, and to give copies of and extracts from the same to any person entitled thereto, such person paying for the same at the rate of fourpence per every seventy-two words or figures, and to permit any person or persons rated to the relief of the poor of the said parish at all reasonable times, to inspect the same or any of them, on pain of dismissal for neglecting to give such copies or permit such inspection:

“To make out, when required by the vestry, the church rate, and procure the same to be signed and completed, and to retain the custody thereof, and, where there is no collector of poor rates or assistant overseer, to make out the poor rate, and procure the same to be allowed, and to make all the subsequent entries in the rate books, and to give the notices thereof required by law:

“To prepare and issue the necessary process for recovering of arrears of such rates respectively before the justices, and procure the summons to be served, and to attend the justices thereon, and advise the churchwardens and overseers as to the recovery of such arrears:

“To keep and make out the accounts of the churchwardens, and to present such accounts to the vestry or other legal authority, to be passed, and to examine the church rate collector's accounts and returns of arrears:

“To assist the overseers in making out their accounts (whenever required by them), and, subject to the rules and regulations of the Commissioners for administering the laws for the relief of the poor [*i.e.*, the Poor Law Board, now the Local Government Board], to examine from time to time the accounts of the assistant overseers or collectors of poor rates, and their return of arrears:

“To attend the audit of accounts of the overseers, and conduct all correspondence arising therefrom:

“To assist the churchwardens or overseers in preparing and making out all other parochial assessments and accounts, and in examining the accounts of the collectors of such assessments:

“To ascertain and make out the list of persons liable to serve on juries, and to cause them to be printed and duly published, and returned to the justices:

“To give the notices for claims to vote for members of Parliament, and to make out lists of voters, and get the same printed and published, and duly returned, according to law, and to attend the

Court for revising them, and to prepare, make out, and publish the burgess lists and the lists of constables: 62 & 63 Vict. c. 14, s. 30

“To make all returns required of the churchwardens or of the overseers by law or proper authority: (1), n.

“To advise the churchwardens and overseers in all the duties of their office; and also to perform such other duties and services of a like nature as the said Commissioners for administering the laws for the relief of the poor in England [now the Local Government Board], from time to time, at the request of the churchwardens or overseers of any such parish, or otherwise, shall prescribe and direct to be performed by such vestry clerk.”

A vestry clerk appointed under the Vestry Clerks Act, 1850, cannot be removed from office except by the vestry with the consent of the Local Government Board or by the Local Government Board (13 & 14 Vict. c. 57, s. 6).

His remuneration is to be fixed, and may be varied from time to time, by the Local Government Board, and is payable out of the poor rate (*Ib.*, s. 8).

He may be required by the Local Government Board to give security (*Ib.*).

Orders authorizing the appointment of vestry clerk under the Act of 1850 are in force in several of the parishes under administrative vestries, but by no means in all of such parishes, and in some also of the parishes under elective vestries included in districts under district boards. Such orders are in most cases of earlier date than 1855, and are usually if not always to be found in the London Gazette.

It will be observed that the duties imposed on a vestry clerk by the Act of 1850 do not comprise by any means all of the duties that must practically fall on the clerk of an administrative vestry.

Where, however, there is a vestry clerk appointed under the Act for a parish with an administrative vestry he, in practice, so far as the writer is aware, acts as clerk to the vestry for all purposes. But in some cases, if not in all, he is actually appointed clerk to the vestry under sect. 62 of the Metropolis Management Act, 1855, as well as being appointed “vestry clerk” under the Act of 1850, and is paid remuneration in respect of the former office out of the general rate under the Act of 1855, in addition to the remuneration he receives, under the Act of 1850 and the order authorizing the appointment of a vestry clerk for the parish, out of the poor rate.

It is most difficult to understand the effect of the present Act with reference to the office of vestry clerk under the Act of 1850.

It will be observed that though most of the duties of the office relate to civil matters, a vestry clerk has duties connected with the affairs of the church. Consequently, the power of a vestry to appoint a vestry clerk appears to be to some extent a power connected with the affairs of the church; and so far as the power is connected with the affairs of the church it seems to fall within the scope of sect. 23 (1), while so far as it is a civil power it falls within sect. 4 (1).

Again, though where a metropolitan borough consists of a single parish, the existing arrangement of having one officer acting as vestry clerk by virtue of one appointment, and clerk to the vestry by virtue of another, could be continued without more practical inconvenience than has been felt in the past, it would be inconsistent with the provisions of the present Act that there should be a vestry clerk charged with the duties imposed on him by the Act of 1850 for a parish forming part only of the borough.

62 & 63 Vict.  
c. 14. s. 30  
(1, n.)

An existing vestry clerk, so far as he is an officer of the vestry, and so far as he is an officer employed in the performance of duties of overseer, will become an officer of the borough council under the present sub-section. But in his capacity as assistant to the churchwardens he will apparently not become an officer of the borough council, but will retain an independent position. Accordingly, it seems that the borough council will not have power under the present sub-section to abolish his office altogether, though they might, perhaps, be held to have power to do so, so far as his office is held under them.

The difficulties above pointed out may of course be met by the provisions of schemes under the present Act.

**Town Clerk.**—By sect. 4 (1) of the present Act, the clerk of the council of a metropolitan borough is to be called the town clerk. And by various provisions in the present Act important duties are imposed on the town clerk.

There is, however, no express provision requiring a borough council to appoint a town clerk. And there is not even any express provision requiring an administrative vestry or district board to appoint a person as *the* clerk of the vestry or board; though in practice one person is always appointed as *the* clerk of such a body, whether assistant clerks are also appointed or not, and, in practice, as has been seen, in a parish under an administrative vestry where there is a "vestry clerk," the vestry clerk acts as *the* clerk of the vestry, though sometimes, if not always, by virtue of an appointment under sect. 62 of the Metropolis Management Act, 1855, in addition to his appointment as "vestry clerk."

Under the present Act it is clear that there must be in each borough some one person holding the office of town clerk; and probably the power to make the necessary appointment may be regarded as derived from sect. 62 of the Metropolis Management Act, 1855.

### Medical Officers of Health. Sanitary Inspectors.—

As to the appointment and tenure of office of these officers, see sects. 106–108, 139 and 142 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), and the Sanitary Officers (London) Order, 1891.

In general these officers are not subject to dismissal without the consent of the Local Government Board.

### Assistant Overseers; Rate Collectors, &c.—

The appointment of assistant overseers was originally authorized by sect. 7 of the Poor Relief Act, 1819 (59 Geo. III. c. 12), which authorized the appointment of an assistant overseer or assistant overseers for any parish by the justices upon the nomination of the vestry.

The assistant overseer might under this enactment be appointed either to perform all the duties of the office of overseer or certain of such duties only; see, on this point, *Skingley v. Surridge* (1843), 11 M. & W. 503; 12 L. J. M. C. 122; 7 Jur. 773; *Points v. Attwood* (1848), 6 C. B. 38; 2 Lutw. Reg. Cas. 117; 18 L. J. C. P. 19; 13 Jur. 83.

The justices were bound, under the Act of 1819, to appoint any person nominated by the vestry: see *Reg. v. Shepley* (1888), 22 Q. B. D. 96; 59 L. T. 696; 37 W. R. 27; 53 J. P. 261; *S. C. nom. Reg. v. Shipley*, 58 L. J. M. C. 6; *Underwood v. Jones* (1891), 60 L. J. M. C. 58; 64 L. T. 144; 55 J. P. 296.



The power of appointing assistant overseers under the Act of 1819 62 & 63 Vict. has now, in most cases in London, been conferred on the vestry by an c. 14, s. 30 order of the Local Government Board under sect. 33 of the Local (1). n. Government Act, 1894. The practical effect of such an order is of course merely to do away with the necessity of the formal appointment by justices.

An assistant overseer appointed under the Act of 1819, whether by the justices on the nomination of the vestry, or by the vestry alone under such an order of the Local Government Board as has been mentioned, holds office strictly at the pleasure of the vestry: see sect. 7 of that Act.

In some parishes the power of appointing an assistant overseer was, before the "appointed day" under the Local Government Act, 1894, which fell about the end of December, 1895 (see sect. 84 (4) of that Act), vested in the guardians under an order of the predecessors of the Local Government Board. And where such an order was in force the powers of the vestry and justices to appoint an assistant overseer were in abeyance by virtue of a provision in sect. 61 of the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101).<sup>1</sup>

By sects. 81 (6) and 89 of the Local Government Act, 1894, "so much of any enactment as authorizes the appointment of assistant overseers by a board of guardians," and also the last-mentioned provisions of sect. 61 of the Poor Law Amendment Act, 1844, were repealed. Since the appointed day under that Act, therefore, there has been no further appointment of an assistant overseer by a board of guardians.

Assistant overseers appointed by guardians before that day and then in office, however, continue in office by virtue of sect. 81 (4) of the Local Government Act, 1894.

By sect. 62 of the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), the Local Government Board have power to make orders directing a board of guardians to appoint a collector of poor rates for any parish in their union; and it is provided by the same section that the power of the vestry, or of justices, or of any persons other than the guardians to appoint a collector for any such parish shall cease. The latter part of the section is ill-expressed, seeing that there is not, and was not at the date of the Act of 1844, any general enactment giving a vestry or justices power to appoint a collector of poor rates as such. It is, however, considered by the Local Government Board to mean that where an assistant overseer is appointed for a parish for which a collector of poor rates is or may be appointed by the guardians, the collection of poor rates and the other duties imposed on a collector of poor rates must be excluded from among the duties of the former.

In some parishes the guardians have power to appoint collectors of poor rates under orders of the Poor Law Commissioners of earlier date than 1844.

As to the tenure of office of collectors of poor rates and assistant overseers appointed by guardians, reference must be made to the particular order authorizing the appointment, and to Arts. 4-6 of the General Order of the Local Government Board of February 2, 1872,

(1) The powers of the predecessors of the Local Government Board to make such orders appear to have been derived from that section, which is, however, somewhat obscure: see *Reg. v. Poor Law Commissioners* (1839), 9 A. & E. 911; 2 P. & D. 323; 8 L. J. M. C. 77; S. C. *nom. Re Cambridge Union*, 3 Jur. 723; *Reg. v. Grane* (1852), 17 Q. B. 793; 21 L. J. M. C. 137; 16 Jur. 663; *Malling Union v. Graham* (1870), L. R. 5 C. P. 201; 39 L. J. C. P. 74; 22 L. T. 789; 18 W. R. 674.

62 & 63 Vict. c. 14, s. 30 (1), n. and Arts. 3 and 5 of the General Order of that Board of June 17, 1886. These general orders will be found in Glen's Poor Law Orders. It will always be found that collectors of poor rates and assistant overseers appointed by guardians are, broadly speaking, not subject to dismissal without the consent of the Local Government Board, so that practically they hold office during good behaviour.

Sect. 7 of the Poor Relief Act, 1819 (59 Geo. III. c. 12) enables the vestry to require an assistant overseer appointed under that Act to give security for the faithful execution of his office by bond made to the overseers of the parish; and sect. 17 of the Act contains provisions enabling the overseers for the time being to sue on such bonds.

Sect. 61 of the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101) requires every assistant overseer to give sufficient security for the due performance of his duties to the guardians of the union, and enables the guardians to take proceedings upon any bond given to the overseers under the Act of 1819.

It is not the practice to require an assistant overseer to give security under both these enactments. It is considered sufficient that he should either give security to the guardians under the Act of 1844, or, provided that the guardians consider the security sufficient, that he should give security to the overseers under the Act of 1819, and that the bond so given should be lodged with the guardians.

Securities given under the above-mentioned enactments are exempt from stamp duty by sect. 61 of the Act of 1844.

The provisions of sect. 61 of the Act of 1844 as to the security to be given by an assistant overseer extend to assistant overseers appointed by guardians; but sometimes the order authorizing the appointment contains other and more stringent provisions on the subject.

It would not seem to be intended, having regard to the present sub-section and sect. 11 (1) of the present Act, that collectors of poor rates should be appointed by the guardians after the appointed day. At the same time there is no express provision depriving the guardians of the power, and it cannot be regarded as at all clear that they will cease to have that power by virtue of anything in the present Act. Of course the difficulty on this point could be easily met by the issue of an order by the Local Government Board rescinding the orders authorising the appointment of collectors of poor rates by guardians in London.

Again it would seem not to be intended that a borough council should appoint assistant overseers as such by virtue of their powers under the Poor Relief Act, 1819; but that they should appoint officers to transact the business of the council in their capacity of overseers under sect. 11 (1) of the present Act.

Whether this is so or not is perhaps not very important, but the distinction between an "assistant overseer" appointed under the Act of 1819 and an officer appointed to assist in the business of overseers under the present Act is not completely academic, for although an assistant overseer appointed under the Act of 1819 is bound to obey the overseers under sect. 61 of the Poor Law Amendment Act, 1844, an assistant overseer has always been regarded as to some extent an independent statutory officer and not by any means as the mere servant of the overseers (see *e.g.* *Reg. v. Pozwell* [1899] 1 Q. B. 396; 68 L. J. Q. B. 274; 80 L. T. 184; 63 J. P. 84; and see also *Reg. v. Smallman* [1897] 1 Q. B. 4; 66 L. J. Q. B. 82; 75 L. T. 394; 45 W. R. 249; 61 J. P. 312; 18 Cox C. C. 451, and the cases there cited), while an officer appointed under sect. 11 (1) of the present Act would doubtless be a mere servant of the council.

Collectors of poor rates and assistant overseers already in office 62 & 63 Vict. will become officers of the borough council under the present sub- c. 14, s. 30 section, and will hold office under the next sub-section on the same (1), n. tenure as heretofore.

Collectors of poor rates and assistant overseers appointed by the guardians, unless they have duly disclaimed its benefits, come within the operation of the Poor Law Officers Superannuation Act, 1896 (59 & 60 Vict. c. 50), and their salaries are accordingly subject to deduction under that Act, and they are absolutely entitled, on fulfilling the conditions required by the Act, to superannuation allowances.

Probably the rights and liabilities of the officers under that Act will be specially dealt with by scheme. If this is not done, very difficult questions will arise with reference to these rights and liabilities in view of the transfer of the officers to the borough councils.

A similar question, it may be observed, may arise with reference to officers appointed by the trustees or overseers of a parish appointed or incorporated under a local Act, for such trustees or overseers are "guardians" within the meaning of the Poor Law Officers Superannuation Act, 1896 (*ib. s. 19*), and that Act accordingly applies to their officers.

By sect. 14 of the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102) it is provided, with reference to the rates which the overseers are required to levy to meet the precepts of administrative vestries and district boards (as to those rates see the note to sect. 10, *ante*) that "in every case in which the vestry does not appoint a collector or collectors to collect such rates, the said overseers are hereby authorised to employ and pay one or more collector or collectors to collect all such rates, and to take from every such collector security for his duly collecting such rates, and paying over and accounting for the same, and such security shall enure to the benefit of the overseers for the time being of every such parish or place."

The power of the overseers to appoint collectors under this enactment arises only where the vestry do not appoint such collectors, which must mean, it seems, since the vestry have no power to appoint collectors of the rates in question under that name, where the vestry do not appoint an assistant overseer or assistant overseers charged with the duty of collecting the rates in question.

Sect. 14 of the Act of 1862 is repealed by the present Act. Collectors appointed under it will become officers of the borough council.

The only general enactment giving power to appoint or employ officers in the performance of the duties of overseers, other than vestry clerks, assistant overseers, and collectors of rates, of which the writer is aware is the Parochial Offices Act, 1861 (24 & 25 Vict. c. 125), under which the overseers of a parish with a population according to the last census exceeding 4,000 have power, with the assent of the vestry and of the Local Government Board, to provide parish offices, and to pay such persons to take care of such offices, "and to aid in the ordinary business of the parish," as the vestry shall authorise and the Local Government Board approve.

**Securities of Existing Officers.**—It will be observed that many of the officers above referred to are required to give security for the faithful discharge of their duties.

62 & 63 Vict.  
c. 14, s. 30  
(1), n.

Whether such a security given before the appointed day in respect of an officer transferred to the borough council will remain valid after the transfer may often be a question of much difficulty.

The general principle that a material change in the office or duties of an officer whose due performance of his office is guaranteed releases the surety in the absence of provisions in the contract of suretyship to the contrary is well established law. But it is often a very nice question whether under particular circumstances the alteration is material. A discussion of this subject is not within the scope of the present work.

56 & 57 Vict.  
c. 73.

(2.) Sub-sections four and seven of section eighty-one of the Local Government Act, 1894, shall apply to the existing officers affected by this Act as if references in those sub-sections to the district council were references to the borough council, and all expenses incurred by the borough council in pursuance of those sub-sections shall be paid out of the general rate: Provided that the borough council may, if it thinks fit, take into account continuous service under any authority or authorities to which this Act refers, in order to calculate the total period of service of any officer entitled to compensation under this Act.

**Note.—Existing Officers.**—The enactments incorporated with the present sub-section are concerned with the tenure of office of existing officers, and with compensation to existing officers peculiarly affected by or in consequence of the Act.

The enactments in question are in many respects exceedingly difficult to construe satisfactorily. But under sub-sect. (4) of the present section a scheme under the Act may make provisions for carrying the section into effect, and such a scheme may no doubt, to a large extent, remove these difficulties either generally or in particular cases. And the ensuing observations must of course be read as applicable subject to the provisions of any such scheme.

“Existing officer” is defined by the next sub-section.

**Tenure of Office.**—Sub-sect. (4) of sect. 81 of the Local Government Act, 1894, provides, with reference to certain officers in that section mentioned, that every such officer “shall hold his office by the same tenure and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore.”

In the case of an officer who enjoys anything in the nature of fixity of tenure of his office, there is comparatively little difficulty about this enactment. But it seems almost impossible to put any satisfactory interpretation on it in the case of officers holding office at pleasure. If an officer, who holds office at the pleasure of an authority, is to hold office under their successors upon the same tenure, he will, it appears, under the first part of the clause, hold office at the pleasure of the succeeding authority. But if that is so the last part of the clause seems to become nugatory: for if the latter authority thought his remuneration too high, they might dismiss him without

compensation and make a new appointment at a less salary. It may 62 & 63 Vict. possibly be that the clause has the effect of making it unlawful for c. 14, s. 30 the succeeding authority to dismiss an existing officer holding office (2), n. at pleasure, with the object of lowering the salary attached to the office only; but this suggestion is put forward with great hesitation.

The provisions as to the tenure of office of an existing officer in the present sub-section are, it seems, subject to the right of the council to abolish the office of such officer, under the preceding sub-section, if they deem his office unnecessary.

**Compensation.**—Sub-sect. (7) of sect. 81 of the Local Government Act, 1894, is as follows:—

“Section 120 of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply in the case of existing officers affected by this Act, whether officers above in this section mentioned or not, as if references in that section to the county council were references to the parish council, or the district council, or board of guardians or other authority whose officer the person affected is when the claim for compensation arises as the case may require. Provided that all expenses incurred by a district council in pursuance of this section shall be paid as general expenses of the council, and any expenses incurred by a board of guardians in pursuance of this section shall be paid out of their common fund, and any expenses incurred by any other authority in pursuance of this section shall be paid out of the fund applicable to the payment of the salary of the offices (*sic*) affected.”

Sect. 120 of the Local Government Act, 1888, is as follows:—

“(1.) Every existing officer declared by this Act to be entitled to compensation, and every other existing officer, whether before mentioned in this Act or not, who by virtue of this Act, or anything done in pursuance of or in consequence of this Act, suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council, to whom the powers of the authority, whose officer he was, are transferred under this Act, regard being had to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and rules relating to Her Majesty's Civil Service, is paid to a person on abolition of office.

“(2.) Every person who is entitled to compensation, as above mentioned, shall deliver to the county council a claim under his hand setting forth the whole amount received and expended by him or his predecessors in office, in every year during the period of five years next before the passing of this Act, on account of the emoluments for which he claims compensation, distinguishing the offices in respect of which the same have been received, and accompanied by a statutory declaration under the Statutory Declaration Act, 1835, that the same is a true statement according to the best of his knowledge, information, and belief.

“(3.) Such statement shall be submitted to the county council, who shall forthwith take the same into consideration, and assess the

62 & 63 Vict. just amount of compensation (if any), and shall forthwith inform the  
c. 14, s. 30 claimant of their decision.  
(2), n.

“(4.) If a claimant is aggrieved by the refusal of the county council to grant any compensation, or by the amount of compensation assessed, or if not less than one third of the members of such council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case may be) may, within three months after the decision of the council, appeal to the Treasury, who shall consider the case and determine whether any compensation, and if so, what amount ought to be granted to the claimant, and such determination shall be final.

“(5.) Any claimant under this section, if so required by any member of the county council, shall attend at a meeting of the council and answer upon oath, which any justice present may administer, all questions asked by any member of the council touching the matters set forth in his claim, and shall further produce all books, papers, and documents in his possession or under his control relating to such claim.

“(6.) The sum payable as compensation to any person in pursuance of this section shall commence to be payable at the date fixed by the council on granting the compensation, or, in case of appeal, by the Treasury, and shall be a specialty debt due to him from the county council, and may be enforced accordingly in like manner as if the council had entered into a bond to pay the same.

“(7.) If a person receiving compensation in pursuance of this section is appointed to any office under the same or any other county council, or by virtue of this Act, or anything done in pursuance of or in consequence of this Act, receives any increase of emoluments of the office held by him, he shall not, while receiving the emoluments of that office, receive any greater amount of his compensation, if any, than, with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds such office.

“(8.) All expenses incurred by a county council in pursuance of this section shall be paid out of the county fund, as a payment for general county purposes.”

The statutory provisions as to the amount of compensation on abolition of office in the Civil Service are contained in the Superannuation Act, 1859 (22 Vict. c. 26). By sect. 7 of that Act the compensation is to be “such special annual allowance by way of compensation as on a full consideration of the circumstances of the case may seem” to the Treasury “to be a reasonable and just compensation for the loss of office”; but the allowance is in no case to exceed two-thirds of the salary and emoluments of the office, “and if the compensation shall exceed the amount to which such person would have been entitled under the scale of superannuation provided by this Act if ten years were added to the number of years which he may have actually served, such allowance shall be granted by special minute, stating the special grounds for granting such allowance, which minute shall be laid before Parliament.”

The scale of superannuation prescribed by the Act of 1859, in sect. 2, allows ten-sixtieths of the annual salary and emoluments of his office to a person who has served ten years, with an addition of one-sixtieth of such salary and emoluments for every additional year of service from ten up to forty. By the Superannuation Act, 1884 (47 & 48

Vict. c. 57, s. 3), it is provided that where the regulations respecting 62 & 63 Vict. an office provide that a person appointed thereto must have held a c. 14, s. 30 professional or other peculiar qualification for a specified number of (2), n. years, the number of years so specified may be added to the actual length of service, for the purpose of computing a superannuation allowance under the Act of 1859.

Though sect. 120 of the Act of 1888 refers to the Acts and "rules" relating to the Civil Service, there appears to be no statutory power to make rules relating to the amount payable as compensation for abolition of office. The practice of the Treasury is to make the following additional allowances, in the case of abolition of office, beyond the allowance of one-sixtieth for each year of service:—

Actual Service.	Addition.
20 years and upwards . . . . .	$\frac{12}{60}$
15 years and less than 20 . . . . .	$\frac{7}{60}$
10 years and less than 15 . . . . .	$\frac{5}{60}$
5 years and less than 10 . . . . .	$\frac{3}{60}$
Under 5 years . . . . .	$\frac{1}{60}$

subject to a reasonable deduction where the officer has not been required to give his whole time to the duties of his office.

The provision in sect. 120 (1) of the Local Government Act, 1888, as to the amount of compensation is no doubt intended to prescribe as the maximum the scale in practice adopted by the Treasury as above mentioned.

If this is so, the maximum is as many sixtieths of the officer's salary and emoluments as he has years of service, plus an additional number of sixtieths in accordance with the scale above set out, subject to the provision that two-thirds of the salary and emoluments is not to be exceeded in any case. For example, the maximum in the case of an officer with three years' service would be  $\frac{3}{60} + \frac{1}{60}$ , or  $\frac{4}{60}$ ; the maximum in the case of an officer with sixteen years' service would be  $\frac{16}{60} + \frac{7}{60}$  or  $\frac{23}{60}$ . The maximum in the case of an officer with thirty years' service or upwards being  $\frac{40}{60}$ .

In the Civil Service it appears that the amount of compensation on abolition of office is calculated with reference to the officer's emoluments for the time being when the office is abolished. Subsect. (2) of sect. 120 of the Act of 1888 seems, however, to suggest that it is intended that the emoluments for the last five years should be taken into consideration in determining the actual amount of compensation; though it would seem that the maximum must be computed with reference to the emoluments for the time being.

The Statutory Declarations Act, 1835 (5 & 6 Will. IV., c. 62, s. 18) authorizes any justice of the peace, notary public, or other officer authorized by law to administer an oath, to take and receive the declaration of a person voluntarily making the same before him in the form given in the schedule to that Act; and renders any person making a declaration which is false or untrue in any material particular guilty of a misdemeanour.

The form of declaration is as follows:—"I, A. B., do solemnly and sincerely declare that:—

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835."

(1) The schedule to the Act sets out its full title instead of the above short title which is authorized by the Short Titles Act, 1896.

62 & 63 Vict.  
c. 14, s. 30  
(2), n.

A statutory declaration generally requires a half-crown stamp, under the Stamp Act, 1891 (54 & 55 Vict. c. 39, sched. I., tit. affidavit); but there is an exemption in favour of a declaration "required by law, and made before a justice of the peace" (*Ib.*). A statutory declaration under sect. 120 of the Local Government Act, 1888, seems to come within this exemption if made before a justice of the peace, but not if made before any other person.

Many most difficult questions arise as to the construction of sect. 120 of the Local Government Act, 1888; but as the determination of these questions practically rests entirely with the Treasury, and as the precedents that guide the Treasury in their decisions are inaccessible, it seems useless to attempt to deal with any of these questions in the present work.

(3.) For the purposes of this section "existing officers" shall mean officers holding office on the twenty-fourth day of February one thousand eight hundred and ninety-nine and also at the passing of this Act.

(4.) A scheme under this Act may make such provisions as may appear necessary for carrying this section into effect, and if necessary for determining the authority to whom any existing officer is to be transferred, and for applying the provisions of this section to any officer who suffers pecuniary loss by reason of anything in or done under this Act, although he is not transferred to a borough council, and although he is not an officer of an authority whose powers and duties are transferred by or under this Act, and for determining in any such case the fund out of which compensation is to be paid.

Construction  
of Acts and  
savings.

**Sect. 31.**—(1.) Where any Act passed before the passing of this Act contains expressions referring to a borough, those expressions shall not be construed as referring to a metropolitan borough created by this Act unless applied thereto by or under the provisions of this Act or of any subsequent enactment.

(2.) Any enactment in any Act, whether general or local, referring to an authority whose powers or duties are transferred by or under this Act to a borough council shall be construed with the necessary modifications, including the substitution of the borough council for that authority and of the borough for the area of that authority.

(3.) Nothing in or done under this Act shall be construed as altering the limits of any parliamentary borough or parliamentary county.

**Note.**—"Parliamentary borough."—This expression is defined by sect. 15 (3) of the Interpretation Act, 1889, as meaning in



modern Acts "any borough, burgh,<sup>1</sup> place or combination of places 62 & 63 Vict. returning a member or members to serve in Parliament, and not c. 14, s. 31 being either a county or division of a county, or a university, or a (31) n. combination of universities."

**Parliamentary County.**—There is no definition of this expression applicable to the present Act. It may be mentioned that the establishment of the county of London by the Local Government Act, 1888, did not affect the counties of Middlesex, Kent, and Surrey as regards the election of members of Parliament: see sect. 92 of that Act.

(4.) Except so far as the areas of parishes and sanitary districts are altered by or under this Act, nothing in this Act shall affect the London (Equalization of Rates) Act, 1894. 57 & 58 Vict. c. 53.

**Note.—London (Equalization of Rates) Act, 1894.**—The object of this Act (57 & 58 Vict. c. 53) is to some extent to distribute the burden of rates over London as a whole, or in other words, to provide for the levy of rates in the richer parts of London for the benefit of the poorer parts.

Broadly speaking the scheme of the Act is to make financial arrangements equivalent to the raising of an equalization fund half-yearly equal to 3*d.* in the pound on the rateable value of London by means of assessments on the several parishes proportionate to their assessable values (see 59 and 60 Vict. c. 16, s. 3), and the distribution of that fund among the several sanitary districts in proportion to their population.

It seems difficult to understand the object of the saving in the present sub-section. Apart from that saving the Act of 1894 would have continued to apply, each borough being of course a sanitary district for the purposes of that Act. And it seems that this will be so notwithstanding the saving.

Of course adjustments will be necessary in respect of the assessment and distribution of the equalization fund in the half-year in which the changes of area under the present Act take effect. Such adjustments will be effected by means of the schemes under the present Act.

(5.) Nothing in this Act, or in any order or scheme under this Act, shall abridge, alter, or affect the powers, rights, duties, or jurisdiction of the School Board for London over the area which for the time being constitutes the administrative county of London.

**Sect. 32.** Nothing in this Act shall authorise any Borough council to alienate any recreation ground or other open space dedicated to the use of the public, or any land held on trusts which prohibit building thereon. Borough councils not to alienate open spaces.

**Sect. 33.**—(1.) For the purposes of this Act the appointed day shall be the day on which the members of the borough councils first elected under this Act come into office, or such other day not being more than six Appointed day and transitory provisions.

(1) This term has reference to Scotland.

62 & 63 Vict.  
c. 14, s. 33  
(1).

months earlier or later, as the Lord President of the Council may appoint, either generally, or with reference to any particular provision of this Act, and different days may be appointed for different purposes and different provisions of this Act, whether contained in the same section or in different sections, or for different boroughs.

56 & 57 Vict.  
c. 73.

(2.) Subject to the provisions of any scheme under this Act, and to such adaptations as may be made by Order in Council, sections eighty-five to eighty-eight of the Local Government Act, 1894 (which contain transitory provisions), shall apply in the case of boroughs and borough councils under this Act.

**Note.—Transitory Provisions of Local Government Act, 1894.**—Sects. 85–88 of the Local Government Act, 1894, are as follows:—

Sect. 85.—“(1.) Every rate and precept for contributions made before the appointed day may be assessed, levied, and collected, and proceedings for the enforcement thereof taken, in like manner as nearly as may be as if this Act had not passed.

“(2.) The accounts of all receipts and expenditure before the appointed day shall be audited, and disallowances, surcharges, and penalties recovered and enforced, and other consequential proceedings had, in like manner as nearly as may be as if this Act had not passed, but as soon as practicable after the appointed day; and every authority, committee, or officer whose duty it is to make up any accounts, or to account for any portion of the receipts or expenditure in any account, shall, until the audit is completed, be deemed for the purpose of such audit to continue in office, and be bound to perform the same duties and render the same accounts and be subject to the same liabilities as before the appointed day.

“(3.) All proceedings, legal and other, commenced before the appointed day, may be carried on in like manner, as nearly as may be, as if this Act had not passed, and any such legal proceeding may be amended in such manner as may appear necessary or proper in order to bring it into conformity with the provisions of this Act.

“(4.) Every valuation list made for a parish divided by this Act shall continue in force until a new valuation list is made.

“(5.) The change of name of an urban sanitary authority shall not affect their identity as a corporate body or derogate from their powers, and any enactment in any Act, whether public general or local and personal, referring to the members of such authority shall, unless inconsistent with this Act, continue to refer to the members of such authority under its new name.”

Sect. 86.—“(1.) Nothing in this Act shall prejudicially affect any securities granted before the passing of this Act on the credit of any rate or property transferred to a council or parish meeting by this Act; and all such securities, as well as all unsecured debts, liabilities, and obligations incurred by any authority in the exercise of any powers or in relation to any property transferred from them to a council or parish meeting shall be discharged, paid, and satisfied by that council or parish meeting, and where for that purpose it is necessary to continue the levy of any rate or the exercise of any power which would have existed but for this Act, that rate may continue to

be levied and that power to be exercised either by the authority who otherwise would have levied or exercised the same, or by the transferee as the case may require. 62 & 63 Vict.  
c. 14, s. 33  
2), n.

“(2.) It shall be the duty of every authority whose powers, duties, and liabilities are transferred by this Act to liquidate so far as practicable before the appointed day, all current debts and liabilities incurred by such authority.”

Sect. 87.—“All such bye-laws, orders, and regulations of any authority, whose powers and duties are transferred by this Act to any council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue in force as if made by that council, and may be revoked or altered accordingly.”

Sect. 88.—“(1.) If at the time when any powers, duties, liabilities, debts, or property are by this Act transferred to a council or parish meeting, any action or proceeding, or any cause of action or proceeding is pending or existing by or against any authority in relation thereto the same shall not be in anywise prejudicially affected by the passing of this Act, but may be continued, prosecuted, and enforced by or against the council or parish meeting as successors of the said authority in like manner as if this Act had not been passed.

“(2.) All contracts, deeds, bonds, agreements, and other instruments subsisting at the time of the transfer in this section mentioned, and affecting any of such powers, duties, liabilities, debts, or property, shall be of as full force and effect against or in favour of the council or parish meeting, and may be enforced as fully and effectually as if, instead of the authority, the council or parish meeting had been a party thereto.”

**Sect. 34.** In this Act, unless the context otherwise requires,— Definitions.

The expression “administrative vestry” means a vestry having the powers of a vestry elected for a parish specified in Schedule A to the Metropolis Management Act, 1855; and the expression “elective vestry” means any vestry elected under the Metropolis Management Act, 1855:

18 & 19 Vict.  
c. 120.

The expression “rateable value” shall include the value of Government property upon which a contribution in lieu of rates is paid:

The expressions “powers,” “duties,” “property,” “liabilities,” and “powers, duties, and liabilities,” have respectively the same meanings as in the Local Government Act, 1888:

51 & 52 Vict.  
c. 41.

The expression “adoptive Acts” means the Baths and Wash-houses Acts, 1846 to 1896, the Burial Acts, 1852 to 1885, and the Public Libraries Acts, 1892 and 1893:

The expression “local Act” includes a provisional order confirmed by an Act, and the Act confirming the order; and the expression “enactment” includes a provision of any such order.

62 & 63 Vict. **Note.**—"Administrative" and "Elective" Vestries.—  
c. 14, s. 34, n. As to these bodies, see the Introduction, pp. xxi, xxii.

**"Powers," &c.**—The definition of "powers," "duties," "property," "liabilities," and "powers, duties, and liabilities" in the Local Government Act, 1888, are contained in sect. 100 of that Act, and are as follows:—

"The expression 'property' includes all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including things in action, and registers, books, and documents; and when used in relation to any quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority, includes any property which on the appointed day belongs to, or is vested in, or held in trust for, or would but for this Act have, on or after that day, belonged to, or been vested in, or held in trust for, such quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority . . . .<sup>1</sup>

"The expression 'powers' includes rights, jurisdiction, capacities, privileges, and immunities:

"The expression 'duties' includes responsibilities and obligations:

"The expression 'liabilities' includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for this Act be liable or subject to, whether accrued due at the date of the transfer or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose:

"The expression 'powers, duties, and liabilities' includes all powers, duties, and liabilities conferred or imposed by or arising under any local and personal Act."

**Adoptive Acts.**—As to these Acts, see the note to sect. 4 (2).

**"Local Act."**—See the note to sect. 16, *ante*, p. 147.

Short title  
and repeal.

**Sect. 35.**—(1.) This Act may be cited as the London Government Act, 1899.

(2.) As from the appointed day the enactments mentioned in the Third Schedule to this Act shall be repealed to the extent in the third column of that schedule mentioned.

**Note.—Repeal.**—With reference to the repeals effected by the present Act, sect. 38 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), will apply. By that section:—

"(1.) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

"(2.) Where this Act or any Act passed after the commencement

(1) The rest of the definition relates exclusively to the River Weaver Trust in the county of Chester.

of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

c. 14, s. 35

“(a.) Revive anything not in force or existing at the time at which the repeal takes effect; or,

(2), n.

“(b.) Affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

“(c.) Affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

“(d.) Affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

“(e.) Affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

“and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.”

As to the construction of sect. 38 of the Act of 1889, see *Ex parte Reason* (1891), 60 L. J. Q. B. 206; 63 L. T. 709; 39 W. R. 271; 8 M. B. R. 11; *Roberts v. Potts* [1894], 1 Q. B. 213; 42 W. R. 294; 58 J. P. 333; *s. c. nom. Jones v. Potts*, 63 L. J. Q. B. 381; 69 L. T. 849.

62 & 63 Vict.  
c. 14.  
Sched I.

## SCHEDULES.

Section 1.

### FIRST SCHEDULE.

#### AREAS WHICH ARE TO BE BOROUGHES.

The parishes of—

Battersea.	Islington.
Bethnal Green.	Kensington.
Camberwell.	Lambeth.
Chelsea.	Paddington.
Fulham.	St. Marylebone.
Hackney.	St. Pancras.
Hammersmith.	Shoreditch.
Hampstead.	

The area consisting of the parishes of Mile End Old Town and St. George's-in-the-East and the districts of the Limehouse and Whitechapel Boards of Works including the Tower of London and the liberties thereof.

The district of the Poplar Board of Works.

The district of the Wandsworth Board of Works.

The area consisting of the parishes of St. George the Martyr, Christchurch, Southwark, St. Saviour, Southwark, and Newington.

The area consisting of the parishes of Rotherhithe, Bermondsey, Horselydown, and St. Olave and St. Thomas, Southwark.

The area of the parliamentary division of Holborn.

The area consisting of the parliamentary divisions of East and Central Finsbury.

The area of the parliamentary borough of Deptford.

The area of the parliamentary borough of Greenwich.

The area of the parliamentary borough of Lewisham.

The area of the parliamentary borough of Woolwich.

The area of the ancient parliamentary borough of Westminster, comprising the parishes of St. Margaret and St. John, Westminster, the parish of St. George, Hanover Square, the parish of St. James, Westminster, the parish of St. Martin-in-the-Fields and the district of the Strand Board of Works, and including the Close of the Collegiate Church of St. Peter, Westminster, and the Liberty of the Rolls.

The area consisting of the parish of Stoke Newington and of the urban district of South Hornsey, or so much thereof as may be incorporated with the county of London under this Act.

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Part I.  
Section 5 (1).

## SECOND SCHEDULE.

### PART I.

#### MINOR POWERS AND DUTIES TO BE TRANSFERRED FROM COUNTY COUNCIL.

Powers and Duties transferred.	Conditions of Transfer.
Power under section eighty-four of the London Building Act, 1891, to license the setting up of wooden structures, and power to take proceedings for default in obtaining or observing the conditions of a licence under that section.	
Power under section one hundred and thirty-four of the London Building Act, 1894, in relation to the removal of unauthorised sky signs.	Subject in case of default to the provisions of the Public Health (London) Act, 1891, as if the default were a default under that Act.
Powers under section one hundred and ninety-nine of the London Building Act, 1894, which section relates to the removal of obstructions in streets.	
Power under section twenty-eight of the Public Health (London) Act, 1891, of registering dairymen.	Subject to the power of the London County Council to make bye-laws, and in case of default to the provisions of the Public Health (London) Act, 1891, as if the default were a default under that Act.

**Note.—Transfer of Powers from London County Council.**—Sect. 5 (1) of the present Act provides that “as from the appointed day the powers and duties of the London County Council under the enactments mentioned in Part One of the Second Schedule to this Act shall, subject to the conditions mentioned in that schedule, be transferred to each borough council as respects their borough.”

As to expenses connected with the exercise of the powers transferred, see sect. 7.

**Licensing of Wooden Structures.**—Sect. 84 of the London Building Act, 1894 (57 & 58 Vict. c. cexiii.), is as follows:—

“(1.) No person shall set up in any place any wooden structure

62 & 63 Vict. c. 14.  
Sched. II.,  
Part I., n.

(unless it be exempt from the operation of this part of this Act) except hoardings enclosing vacant land and not exceeding in any part twelve feet in height without having first obtained for that purpose a licence from the Council and the licence may contain such conditions with respect to the structure and the time for which it is to be permitted to continue in the said place as the Council think expedient.

“(2.) Provided that a licence shall not be required in the case of any wooden structure of a movable or temporary character erected by a builder for his use during the construction alteration or repair of any building unless the same is not taken down or removed immediately after such construction alteration or repair.

“Provided that this section shall not extend to or apply within the City or to any hoarding duly licensed by the local authority under any statutory powers in that behalf.”

“The Council” in the London Building Act, it should be mentioned, means the London County Council.

The section occurs in Part VII. of the Act, which comprises sects. 82-86, and is concerned with “special and temporary buildings and wooden structures.”

It is a re-enactment, with some modifications, of provisions in sect. 13 of the Metropolis Management and Building Acts (Amendment) Act, 1882 (45 & 46 Vict. c. 14), which provided that it should not be lawful for any person “to erect or set up in any place any wooden structure or erection of a movable or temporary character,” unless exempt, without a licence.

The following cases as to what constituted “a wooden structure or erection of a movable or temporary character” within sect. 13 of the Act of 1882 may be mentioned, though whether they will be followed, under sect. 84 of the Act of 1894, remains to be seen.

In *Hall v. Smallpiece* (1890), 59 L. J. M. C. 97; 54 J. P. 710, it was held on a case stated by a magistrate (reversing his decision), that a steam roundabout, shooting gallery, and caravans did not come within the operation of sect. 13 of the Act of 1882.

In *London County Council v. Pearce* [1892] 2 Q. B. 109; 66 L. T. 685; 40 W. R. 543; 56 J. P. 790, it was held on a case stated by a magistrate that the magistrate was justified in holding that the section did not apply to a builder's office constructed of wood and roofed with zinc, and placed upon wheels for the purpose of enabling it to be wheeled about to any place where building operations were being carried on.

In *London County Council v. Humphreys* [1894], 2 Q. B. 755; 63 L. J. M. C. 215; 71 L. T. 201; 43 W. R. 13; 58 J. P. 734, it was held, affirming a magistrate's decision, that the section did not apply to a bungalow of considerable size constructed of wood and corrugated iron, which was erected on a piece of land for the purpose of exhibition and sale, but which was not used or occupied, or intended to be used or occupied, on the spot where it was erected.

In *London County Council v. Candler* (1891) 60 L. J. M. C. 114; 55 J. P. 679, it was held that a proviso in the section, similar to sub-sect. (2) of sect. 84, did not apply to a structure erected for the purpose of carrying on, during the progress of the works, the business usually carried on in the premises undergoing alteration or repair.

Exemptions from Part VII. of the Act are contained in sects. 85, 86, 201-206, 210 and 212. These sections are too lengthy for quotation here.

After the present Act comes into operation the council of a metropolitan borough will themselves be the “local authority” within



the meaning of the London Building Act: see sect. 5 (42) of that Act and sect. 4 (1) of the present Act. They will have power to license the erection of hoardings under sect. 122 of the Metropolis Management Act, 1855. See also as to their powers in relation to hoardings, sect. 121 of the Metropolis Management Act, 1855, and sect. 32 of the London County Council (General Purposes) Act, 1890 (53 & 54 Vict. c. cxxliii.).

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Proceedings in respect of a breach of sect. 84 of the London Building Act may no doubt be taken by the borough council under sect. 200 of that Act as amended by sects. 6 and 7 of the London Building Act (Amendment) Act, 1898 (61 & 62 Vict. c. cxxxvii.), although the present schedule does not expressly refer to those enactments.

Sect. 200 of the Act of 1894 begins by providing that "subject to the provisions of this Act every person who does any of the things specified in this section shall be deemed to have committed an offence against this Act and shall be liable upon conviction in a summary manner to a penalty not exceeding the amount hereafter specified in connection with such offence and to a further penalty not exceeding the amount hereafter stated as the daily penalty in connection with such offence for every day on which the offence is continued after such conviction." The section then enumerates and provides penalties for a large number of offences against the Act, and *inter alia* provides (see sub-sect. (3) (e)) that "Every person who . . . sets up erects or adapts any building or structure to which Part VII. of this Act applies without having obtained any licence required by that Part of this Act or makes default in observing any of the conditions contained in such licence; shall be liable to a penalty not exceeding twenty pounds a day during every day of the continuance of the non-compliance with the order of the court in reference to the matters aforesaid."

This provision is amended by sects. 6 and 7 of the amending Act of 1898, which provide as follows:—

Sect. 6. "Sub-sect. (3) (e) of the two hundredth section of the principal Act shall hereafter be read and construed and take effect as though the word 'retains' had been inserted therein immediately after the word 'erects' and the words 'approval or' had been inserted therein immediately before the word 'licence' wherever such word occurs therein."

Sect. 7. "Every person who does any of the things specified in paragraphs (a) (d) and (e) of sub-sect. (3) of sect. 200 of the principal Act as amended by this Act shall be liable on conviction to a penalty not exceeding forty shillings for every such offence and the court before whom an information is laid by the Council in respect thereof may in addition to imposing such penalty make an order in writing directing such person to demolish the building or structure complained of or any part thereof or to comply with the conditions contained in any consent licence or approval granted by the Council for the setting up erection adaptation alteration or retention of such building or structure and such order of the court shall be deemed to be the order of the court within the meaning and for the purposes of the third sub-section of the two hundredth section of the principal Act and the imposition of any penalty under the provisions of this present section shall be without prejudice to any proceedings under the third sub-section of the two hundredth section of the principal Act for the daily penalty therein mentioned or under any other provisions of the principal Act or otherwise but so that no person shall be liable to more than one penalty (other than daily penalties) for the same offence."

62 & 63 Vict.  
c. 14.  
Sched. II.,  
Part I., n.

The ordinary course therefore in case of a breach of sect. 84 will be to proceed under sect. 7 of the Act of 1898, and obtain an order under that section for the demolition or alteration of the structure. If that order is not complied with proceedings may be taken for the heavy penalties imposed by sect. 200 (3 *e*) of the Act of 1894 as amended by sect. 6 of the Act of 1898. And after the borough council have obtained a conviction under that section it will be open to them to proceed further under sect. 170 of the Act of 1894 as applied by Part II. of the present schedule, with a view to causing the offending structure to be demolished; see *post*, p. 207.

An alternative method of proceeding in case of a contravention of sect. 84 of the Act of 1894 is at present afforded by sect. 150 and the following sections of that Act.

By sect. 150, "Where it appears from the building notice served on the district surveyor under this Act that it is proposed to erect any building or structure or to do any work to in or upon any building which will be in contravention of this Act or that anything required by this Act is proposed to be omitted the district surveyor shall serve upon the builder or building owner a notice of objection to such proposed erection and in the event of the builder or the building owner being dissatisfied with the decision of the surveyor he may within fourteen days of the date of the notice of objection appeal to a petty sessional court who may make an order either affirming the objection or otherwise."

By sect. 151 "In any of the following cases (that is to say):—

- (a) Where in erecting any building or structure or in doing any work to in or upon any building anything is done in contravention of this Act or anything required by this Act is omitted to be done

\* \* \* \* \*

the district surveyor shall serve on the builder engaged in erecting such building or structure or in doing such work a notice (hereinafter referred to as a notice of irregularity) requiring him within forty-eight hours from the date of the notice to cause anything done in contravention of this Act to be amended or to do anything required to be done by this Act which has been omitted to be done. . . ."

Sect. 152 contains special provisions as to the service of the notice of irregularity by the district surveyor in cases where the building or structure has ceased to be in charge of or under the control of the builder.

Sect. 153 provides as follows:—

"(1) If the person on whom the notice of irregularity is served make default in complying with that notice within the period named therein a petty sessional court on complaint made in a summary manner as provided by the Summary Jurisdiction Acts by the district surveyor may make an order on such person requiring him to comply with the notice or with any requisitions therein which may in the opinion of the court be authorized by this Act within a time to be named in the order.

"(2.) If the order be not complied with the Council [*i.e.*, the London County Council] may if they think fit after giving seven days' notice to such person enter with a sufficient number of workmen upon the premises and do all such things as may be necessary for enforcing the requisitions of the notice and for bringing any building or work into conformity with the provisions of this Act and all expenses incurred by the Council in so doing may be recovered in a summary way either

from the person on whom the order was made or from the owner of the premises." 62 & 63 Vict. c. 14.

Proceedings under sect. 200 (3 *e*) may doubtless follow upon an order of the court under sect. 150 or 153 (1).

It will be observed that sects. 150, 151, and 153 (1) contemplate action being taken by the district surveyor.

By sect. 159, however, it is provided that "The Council [*i.e.*, the London County Council] may in any case where they shall think fit so to do undertake on behalf of a district surveyor any proceedings which would otherwise be undertaken by such district surveyor or may pay the costs incurred by any district surveyor in any proceedings taken by him under this Act."

There would appear to be nothing to prevent a district surveyor, after the coming into operation of the present Act, from proceeding under sects. 150-153 with regard to a structure contravening sect. 84. But it is far from clear whether or not the present Act has the effect of transferring the powers of the County Council under sect. 159 to the borough council in case of a breach of sect. 84.

**Sky Signs.**—The provisions of the London Building Act, 1894, as to sky signs, which form Part XII. of that Act, comprising sects. 125-135, are a re-enactment, with modifications, of the London Sky Signs Act, 1891 (54 and 55 Vict. c. lxxviii.) as amended by sect. 17 of the London County Council (General Powers) Act, 1893 (56 & 57 Vict. c. cxxi).

Sect. 134 of the London Building Act, 1894, under which section the council of a metropolitan borough will have powers by virtue of the present schedule, is as follows:—

"If any sky sign be erected or retained contrary to the provisions of this Act [*or after the licence for the maintenance or retention thereof for any period shall have become void*<sup>1</sup>] it shall be lawful for the council to take proceedings for the taking down and removal of the sky sign in the same manner in all respects as if it were a structure certified to be in a dangerous state under Part IX. of this Act except that the provisions of the said Part with respect to arbitration shall not apply and it shall be lawful for the Council or any officers servants or workmen appointed by them for that purpose (after obtaining the order of a petty sessional court for the taking down of the sky sign and after the expiration of the period (if any) fixed by such order for taking down the same) to enter upon the land building or premises on or over which the sky sign is erected and to take down and remove the sky sign and to execute and do any works which may be necessary for that purpose and for leaving any building to which the same was attached in a condition of safety and all the expenses of and incidental to any such work shall be repaid and be recoverable as though the same were a penalty imposed by this Act.

"For the purpose of any such proceeding the expression 'the owner' in the said Part of this Act shall mean the occupier of the house building or structure on or to which the sky sign is erected or attached or if the house building or structure is unoccupied then the person who would be the owner thereof within the meaning of this Act."

By sects. 127 and 128 of the Act it is unlawful to erect, and it will very shortly become unlawful to retain, any sky sign as defined

(1) The words in italics will have ceased to be operative before the present Act comes into operation.

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c. 14.  
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Part I., n.

by the Act, the periods during which sky signs erected before the Act might be temporarily retained expiring at latest in August, 1899. "Sky sign," for the purposes of Part XII. of the Act, is defined thus in sect. 125 :—

"'Sky sign' means any word letter model sign device or representation in the nature of an advertisement announcement or direction supported on or attached to any post pole standard framework or other support wholly or in part upon over or above any building or structure which or any part of which sky sign shall be visible against the sky from any point in any street or public way and includes all and every part of any such post pole standard framework or other support. The expression 'sky sign' shall also include any balloon parachute or similar device employed wholly or in part for the purposes of any advertisement or announcement on over or above any building structure or erection of any kind or on or over any street or public way but shall not be deemed to include—

"(i) Any flagstaff pole vane or weathercock unless adapted or used wholly or in part for the purposes of any advertisement or announcement.

"(ii) Any sign on any board frame or any other contrivance securely fixed to or on the top of the wall or parapet of any building on the cornice or blocking course of any wall or to the ridge of a roof provided that such board frame or other contrivance be of one continuous face and not open work and do not extend in height more than three feet above any part of the wall or parapet or ridge to against or on which it is fixed or supported; or

"(iii) Any such word letter model sign device or representation as aforesaid which relates exclusively to the business of a railway company and which is placed or may be placed wholly upon or over any railway station yard or platform or station approach or premises belonging to a railway company and which is also so placed that it could not fall into any street or public place."

The case of *London County Council v. Carwardine* (1892), 62 L. J. M. C. 40; 68 L. T. 761; 57 J. P. 181, decided under the London Sky Signs Act, 1891 (54 & 55 Vict. c. lxxviii.), shows that a structure may be a sky sign within the definition, although it serves purposes other than that of advertisement. In that case the question arose with reference to a structure erected over a building and consisting of an open tower or framework of timber some fifty feet high, with a windmill on the top. Half-way up the tower was a gallery surrounding the tower, with a fence consisting of large letters forming the proprietor's name. And on the rudder of the windmill was painted the proprietor's name and business. It was held that the structure was a sky sign, although the windmill was used to drive machinery within the building for useful purposes.

In *Tussaud v. London County Council* (1892) 57 J. P. 184, the owner of a waxworks exhibition had fixed the letters "Madame Tussaud's" to a galvanized iron trellis, supported on a palisade surmounting one of the end walls of a large building. The dome of the building was some thirty feet higher than and separated from these letters. At one small part of the street the letters were visible against the sky. Proceedings were taken before a magistrate under the London Sky Signs Act, 1891, and the magistrate held that the structure was a sky sign. But the Court, on a case stated, reversed his decision on the ground that the structure was not within the definition of sky sign in that Act, chiefly, it would seem, on the ground that it was not "wholly or in part over" the building to

which it was attached. The definition in sect. 125 of the Act of 1894, however, instead of the words "wholly or in part over," contains the words "wholly or in part upon over or above," and the decision, which the writer ventures to think very unsatisfactory, is hardly likely to be followed.

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c. 14.  
Sched. II.  
Part I. n.

In *London County Council v. Savoy Hotel Co.* (1896) 60 J. P. 457, the hotel company had affixed to their hotel a structure composed of boards to which were affixed embossed glass letters in metal frames. The boards to which the letters were affixed were visible from the streets against the sky, but the letters themselves were not visible against the sky, but only against the boards. It was held, on a case stated by a magistrate, reversing his decision, that the structure was a sky sign. And Wills, J., pointed out the above-mentioned distinction between the definitions in the Acts of 1891 and 1894.

The definitions of "street" and "way" contained in the Act are quoted *post*, p. 206.

The proceedings for the removal of sky signs under sect. 134 and Part IX. of the Act as applied by that section will be shortly as follows:—

First, notice must be served on the occupier of the premises, or, if they are unoccupied, upon the "person who would be the owner," requiring him to take down or remove the sky sign (See sect. 106). If the notice is not complied with complaint must be made to a petty sessional court, and that court may order the defendant to take down the sign within a time to be fixed by the order (see sect. 107). If that order is not complied with the council may themselves cause the sign to be removed under sect. 134. And they may under the same section recover the expenses of and incidental to the work, as though the same were a penalty imposed by the Act, that is in the manner prescribed by the Summary Jurisdiction Acts (See sect. 166).

The expression "owner" is defined by sect. 5 (29) as applying to "every person in possession or receipt either of the whole or of any part of the rents or profits of any land or tenement or in the occupation of any land or tenement otherwise than as a tenant from year to year or for any less term or as a tenant at will." The numerous cases that have been decided under this and other similar definitions as to the meaning of "owner," it is beyond the scope of this work to discuss. Probably the expression "the person who would be the owner" in sect. 134 means the person who is the owner within the definition.

A person who places, erects, or retains, or suffers or permits to be placed or retained, any sky sign contrary to the provisions of the Act is liable to penalties under sect. 200 (See sub-sect. (11 a)). The council of a metropolitan borough are, however, not expressly authorised to proceed for penalties for this offence. As to proceedings for penalties under the Act by such a council in cases where they are not expressly authorised to take such proceedings, see the note to Part II. of the present schedule, *post*, p. 208.

As to the provisions of the Public Health (London) Act, 1891, with reference to default on the part of a sanitary authority in the discharge of their duties, see *ante*, p. 208.

**Obstructions in Streets.**—Sect. 199 of the London Building Act, 1894, provides as follows:—

"No person not being lawfully authorised shall erect or place or cause to be erected or placed any post rail fence bar obstruction or encroachment whatsoever in upon over or under any street and no person not being lawfully authorised shall alter or interfere with

62 & 63 Vict.  
c. 14.  
Sched. II.,  
Part I., n. any street in such manner as to impede or hinder the traffic for which such street was formed or laid out from passing over the same.  
“The Council may at the expiration of two days after giving notice in writing to the person to demolish or remove any such post rail fence bar obstruction or encroachment or to reinstate or restore such street to its former condition (as the case may be) demolish or remove any such post rail fence bar obstruction or encroachment and reinstate or restore such street to its former condition and recover the expenses thereof from such person in a summary manner.

“This section shall not apply within the City.”

By sect. 5 (1) of the Act “street” is defined as meaning and including, unless the context otherwise requires, “any highway and any road bridge lane mews footway square court alley passage whether a thoroughfare or not and a part of any such highway road bridge lane mews footway square court alley or passage.”

There are very numerous decisions, to which it is beyond the scope of the present work to refer, as to the meaning of the expression “street” both apart from definition, and under definitions similar to that above quoted. The definition is not a little obscured by the next clause of sect. 5, whereby “way” is defined as including “any public roadway or footpath not being a street and any private roadway or footpath which it is proposed to convert into a highway or to form lay out or adapt as a street.”

**Registration of Dairymen.**—As to the registration of dairymen under sect. 28 of the Public Health (London) Act, 1891, see *ante*, p. 91.

## Section 5 (2).

## PART II.

### POWERS OF COUNTY COUNCIL TO BE EXERCISED ALSO BY BOROUGH COUNCILS.

	Powers exercisable.	Conditions of Exercise.
57 & 58 Vict. c. cxxiii.	Power under section one hundred and seventy of the London Building Act, 1894, which section relates to the demolition of buildings in case of the conviction for an offence against the Act, or byelaws made under it.	The power to be exercised only where the borough council have obtained the conviction.
	Power to take proceedings in respect of timber or other articles piled, stacked, or stored in contravention of section one hundred and ninety-seven or section two hundred (11) ( <i>h</i> ) of the London Building Act, 1894.	The power to be exercised only within the borough.
34 & 35 Vict. c. 113	Powers under sections seventeen to twenty-five of the Metropolis Water Act, 1871, with respect to regulations of water companies.	The power to be exercised only with respect to a water company supplying any part of the borough.

Powers exercisable.	Conditions of Exercise.	62 & 63 Vict. c. 14 Sched. II., Part II. 51 & 52 Vict. c. 25.
Power under section seven of the Railway and Canal Traffic Act, 1888, to make or appear in opposition to certain complaints.		
Powers under section sixty-five of the Local Government Act, 1888, which section relates to the acquisition of land.	The power to be exercised only where the land is required for the purpose of any of the powers or duties of the borough council.	51 & 52 Vict. c. 41.
Power to adopt Part III. of the Housing of the Working Classes Act, 1890.	The power to be exercised only within the borough.	53 & 54 Vict. c. 70.
Power to make byelaws under section twenty-three of the Municipal Corporations Act, 1882, as applied by section sixteen of the Local Government Act, 1888.	The byelaws to be in force only within the borough and not to be inconsistent with any byelaws made by the county council.	45 & 46 Vict. c. 50. 51 & 52 Vict. c. 41.

**Note.—Powers of London County Council exercisable by Borough Council.**—The present part of Sched. II. is referred to in sect. 5 (2) of the Act which provides that, "As from the appointed day the powers of the London County Council under the enactments mentioned in Part Two of the Second Schedule to this Act may, subject to the conditions mentioned in that Schedule, be exercised also by each borough council as respects their borough."

**Demolition of Buildings and Structures in Case of Conviction.**—Sect. 170 of the London Building Act, 1894, provides as follows:—

"Where any person has been convicted of an offence against any of the provisions of any Part of this Act or any bye-law made thereunder by constructing erecting adapting extending raising altering uniting or separating any building or structure or any part of any building or structure in contravention of any provisions of any Part of this Act it shall be lawful for the Council after giving fourteen days' notice to such person to bring such building or structure into conformity with the said provisions and after default shall have been made in complying with such notice and notwithstanding the imposition and recovery of any penalty to cause complaint thereof to be made before a petty sessional court who may thereupon issue a summons requiring the person making such default as aforesaid to appear to answer such complaint and if the said complaint is proved to the satisfaction of the court the court may make an order in writing authorizing the Council and it shall thereupon be lawful for the Council to enter upon such building or structure with a sufficient number of workmen and to demolish or alter such building or structure or any part thereof so far as the same shall have been

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c. 14.  
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adjudged to be in contravention of this Act or any bye-law under this Act and to do whatever other acts may be necessary for such purpose and to remove the materials to some convenient place and if in their discretion they think fit sell the same in such manner as they may think fit and all expenses incurred by the Council in demolishing or altering such building or structure or any part thereof and in doing such other acts as aforesaid or the balance of such expenses after deducting the proceeds of sale of the aforesaid materials (if the Council thinks fit to sell the same) may be recovered from the person committing the offence aforesaid in a summary manner.

“If the proceeds of such sale shall be more than sufficient to defray such expenses the Council shall restore the surplus of such proceeds after deducting the amount of all such expenses to the owner of the building or structure on demand.”

The council of a metropolitan borough will have power under this section only in those cases where the conviction has been obtained by that council.

The London Building Act does not specify the persons by whom proceedings are to be taken in respect of an offence against its provisions, and though it is obviously contemplated, as is the practice, that such proceedings should in general be taken by the London County Council, it seems to be open to any person to prosecute for such offences. See *Reg. v. Stewart* [1896] 1 Q.B. 300; 65 L. J. M. C. 83; 74 L. T. 54; 44 T. R. 368; 60 J. P. 356; 18 Cox C. C. 232.

Consequently it seems that a conviction for any breach of the Act might be obtained on the prosecution of the council of a metropolitan borough. But it seems that such a council could only justify expenditure on such a prosecution in the cases where they are expressly authorized to take proceedings, or in cases where they may be able to justify such expenditure under the Borough Funds Act, 1872, as to which see sect. 6 (6) of the present Act and the note thereto, *ante*, pp. 92-96.

It may well be doubted, however, whether it is intended that the borough council should have powers under sect. 170, except in those cases where they have obtained a conviction in the exercise of a special power to prosecute.

The council will have special power to prosecute, by virtue of the present schedule, in respect of wooden structures (see *ante*, pp. 201-203), and stacks of timber, etc. (see *post*, p. 209), contravening the Act.

By sect. 164 of the Act, bye-laws made under the Act by the London County Council as to the regulations of lamps, signs, and other structures overhanging the public way are to be “administered” by the “local authority,” that is, under the present Act, by the borough council (see *ante*, p. 201). And this provision must, no doubt, be read as giving the council special power to prosecute in the case of a breach of those bye-laws.

By sect. 171 it is provided that “the powers conferred by this Part of this Act upon the Council with respect to any building or structure in case such building or structure has been erected extended or raised contrary to the provisions of this Act beyond the general line of buildings in the street place or row of houses in which the same is situate shall extend and apply to and may be exercised by the local authority in like manner as by the Council.”

Under this section the council of a metropolitan borough as the “local authority” under the London Building Act, will be able to exercise the powers of sect. 170 as to buildings contravening the provisions of Part III. of the Act, with reference to the line of building frontage, whether the conviction has been obtained by them or by any



other authority or person. But it may be doubted whether the section can be regarded as authorizing the local authority to incur expenditure on a prosecution for a breach of Part III. of the Act.

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c. 14.  
Sched II.,  
Part II., n.

**Timber Stacks, etc.**—Sect. 197 of the London Building Act, 1894, is as follows:—

“(1) It shall not be lawful for any person to erect or place a pile stack or store of cut or uncut timber lathwood firewood casks or barrels whether on or above the ground nearer to a street than the buildings forming the general line of buildings therein except in a position wherein such a pile stack or store stood on the first day of January 1894.

“(2) It shall not be lawful for any person to pile stack or store cut or uncut timber lathwood firewood casks or barrels in the same yard or ground or in any part of the same premises with any furnace except in the following cases:—

(a) Where the furnace is enclosed in a building or chamber constructed of fire-resisting materials; or

(b) Where there is a distance of not less than ten feet between the furnace and the pile stack or store of timber lathwood firewood casks or barrels.

“(3) No pile stack or store of timber lathwood firewood casks or barrels shall exceed sixty feet in height from the level of the ground.

“(4) It shall not be lawful to form in any pile stack or store of timber lathwood firewood casks or barrels any room or chamber or space (other than a passage) to be used for any purpose whatever.

“(5) Timber yards existing at the time of the passing of this Act shall comply with these provisions within two years from the date of the passing of the Act but the Council shall have power in individual cases if they think fit to prolong this time for a term not exceeding seven years and shall have power to relax any of the provisions of this section.

“(6) This section shall not apply to railway companies or canal companies so far as regards timber lathwood firewood casks or barrels in transit or piled stacked or stored on land occupied by them for the purposes of their undertakings nor to timber lathwood firewood casks or barrels piled stacked or stored in or on any yard or other premises occupied by any dock company for the purposes of their undertaking or to any such yard or premises or to any person piling or stacking or storing timber lathwood firewood casks or barrels in or on any such yard or premises.”

By sect. 200 (11). “Any person who . . .

(b) Acts in any manner in contravention of any of the provisions of this Act relating to the storing of wood and timber . . .

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shall be liable to a penalty not exceeding forty shillings and to a daily penalty not exceeding the like amount.”

As to “daily” penalties under sect. 200, see *ante*, p. 201.

Sect. 22 of the Act provides that no building or structure shall, without the consent of the London County Council, be erected “beyond the general line of buildings in any street or part of a street place or row of houses in which the same is situate in case the distance of such line of buildings from the highway does not exceed fifty feet or within fifty feet of the highway when the distance of the line of buildings therefrom amounts to or exceeds fifty feet. . . . Such general line of buildings shall if required be defined by the superin-

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tending architect by a certificate such certificate to be issued within one month from the date of the application therefor." And sects. 23-31, which, with sect. 22, constitute Part III. of the Act, contain various provisions which may be regarded as consequential on those in sect. 22.

It is, however, not clear whether the provisions of Part III. with reference to the general line of buildings apply for the purpose of sub-sect. (1) of sect. 197, so that the determination of the general line of buildings under that sub-section rests with the superintending architect, or whether under that sub-section it is for the Court before whom proceedings for a breach of the sub-section are taken, to determine for itself what is the general line of buildings. There have, it should be mentioned, been numerous decisions as to the "general line of buildings" under Part III., and the earlier enactments thereby replaced.

The definition of "street" in the Act is quoted, *ante*, p. 206.

It should be observed that while the council of a metropolitan borough will have power to take proceedings for a breach of sect. 197. they will not be able to exercise the dispensing powers conferred on the London County Council by sub-sect. (5) of that section.

**Regulations of Metropolitan Water Companies.**—The London County Council are, as respects the county of London, the "metropolitan authority" within the meaning of the Metropolis Water Act, 1871 (34 & 35 Vict. c. 113. See sect. 3 and sched. A). And the effect of the provisions of the present schedule, as to the regulations of metropolitan water companies, is to make the council of a metropolitan borough a "metropolitan authority" for the purposes of sects. 17-25 of that Act, so far as regards a company supplying any part of their borough. Sect. 17 of that Act required every metropolitan water company, within six months of the passing of that Act, to make regulations for the purposes for which regulations might be made under sect. 26 of the Metropolis Water Act, 1852 (15 & 16 Vict. c. 84). Sect. 26 of the Act of 1852 provides that it shall be lawful for any of the metropolitan water companies to make such regulations as shall be necessary or expedient for the purpose of preventing the waste or misuse of water; and therein, amongst other things, to prescribe the size, nature, and strength of the pipes, cocks, cisterns, and other apparatus to be used, and to interdict any arrangements, and the use of any pipes, cocks, cisterns, or other apparatus, which may tend to such waste or misuse as aforesaid. The scope of the section was extended by sect. 17 of the Act of 1871, which provides that the provisions of sect. 26 of the Act of 1852 "shall apply also to the preventing of undue consumption or contamination of water."

A uniform set of regulations applicable to all the metropolitan water companies was made under sect. 17 of the Act of 1871 and duly confirmed under sect. 22 of that Act (see *post*, p. 211), on August 10th, 1872. These regulations, which still remain in force, will be found in the London Gazette of August 13. 1872, p. 3635.

Various powers were, by the Metropolis Water Acts, 1852 and 1871, given to the Board of Trade. But by sect. 35 of the Public Health Act, 1872 (35 & 36 Vict. c. 79), re-enacted in Sched. V., Pt. III. of the Public Health Act, 1875, the powers and duties of the Board of Trade under the Acts of 1852 and 1871 were transferred to the Local Government Board, and it is enacted that the "Local Government Board" shall be deemed to be substituted for the "Board of Trade" wherever the latter expression occurs in those Acts. This substitution has been made in the sections of the Act of 1871 quoted below.

By sect. 18 of the Act of 1871, "any company [*i.e.* any metropolitan water company], if it thinks fit, or if requested so to do by the Local Government Board, may repeal or alter any of the regulations made for the purposes aforesaid, or make new regulations instead of any of the same."

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By sect. 19, "In case any company does not make regulations within the time specified in this Act, or in case any company, on being requested in writing by the metropolitan authority, or by any ten consumers of the water supplied by that company, to repeal or alter any of the regulations for the time being in force, or to make new regulations instead of any of the same, refuses so to do, the Local Government Board may, if they think fit, appoint a competent and impartial person of engineering knowledge and experience to report to them as to such regulations as may be necessary for the execution of this Act, or as to the expediency of altering or repealing such regulations, or of making new regulations, in conformity with such request as aforesaid, and on the report of such person the Local Government Board may make such regulations, repeal, or alterations as they think fit."

Sect. 20 enables penalties to be imposed by the regulations.

By sect. 21, "Within four days after the making of any regulation, or of any repeal or alteration in any regulation, notice of the same shall be served upon the metropolitan authority by the company or person making the same."

By sect. 22, "No regulation, and no repeal or alteration of any regulation, made under the authority of the Metropolis Water Act, 1852, or of this Act, by a company, shall be of any force or effect unless and until the same be submitted to and confirmed by the Local Government Board, who may institute such inquiry in relation thereto as they shall think fit, and who at such inquiry shall hear the metropolitan authority, and the company, if desiring to be heard, and the said Board shall, if they think fit, or if requested, nominate and have present at such inquiry to advise and assist them a competent and impartial water-works engineer. The Local Government Board may, after such inquiry, confirm or disallow any such regulation, repeal, or alteration, in whole or in part, or may confirm the same with such modification or alteration as they may think proper; and no such regulation, repeal, or alteration shall be made by the Local Government Board on any such report as aforesaid except after a like inquiry and hearing, with the like advice and assistance as aforesaid: Provided that no such regulation, repeal, or alteration shall be confirmed or made (as the case may be) by the Local Government Board unless notice in that behalf shall have been given by the company to which the same relates, or by such person as the Local Government Board direct, in the London Gazette and in the daily morning newspapers circulated within the limits of this Act, one month at least before the inquiry; and one month at least before any such inquiry is held a copy of the regulation, repeal, or alteration in question shall be sent by such company or person to the office of the metropolitan authority, and the same shall for one month be kept open during office hours at the respective offices of the metropolitan authority and of the said company to the inspection of all persons, without fee or reward, and a copy of the same or of any part thereof shall be furnished to every person who shall apply for the same, on payment of sixpence for every one hundred words contained in such copy."

By sect. 23, "A printed copy of all regulations in force for the time being shall be kept at the office of the metropolitan authority and of

62 & 63 Vict. c. 14. every company within the limits of this Act, and all persons may at all reasonable times inspect such copy without payment." The section further requires the companies to supply copies of the regulations at specified prices.

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Sect. 24 provides that the regulations shall be binding on all parties; and sect. 25 makes printed copies of the regulations, purporting to be duly sealed, conclusive evidence of such regulations.

The Metropolis Water Acts, 1852 and 1871, have now, it may be mentioned, been extended by the Metropolis Water Act, 1897 (60 & 61 Vict. c. 56) to the whole of the area of supply of the metropolitan water companies; and the county councils and councils of county boroughs are given the functions of "metropolitan authority" with reference to the portions of that area outside London.

In the City the Corporation are the "metropolitan authority."

### **Complaints to Railway and Canal Commissioners.—**

Sect. 7 of the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25) provides that any of certain local authorities, including the Metropolitan Board of Works, now the London County Council, may make to the Railway and Canal Commissioners "any complaint which the Commissioners have jurisdiction to determine, and may do so without proof that such authority is aggrieved by the matter complained of, and any of such authorities may appear in opposition to any complaint which the Commissioners have jurisdiction to determine in any case where such authority, or the persons represented by them, appear to the Commissioners to be likely to be affected by any determination of the Commissioners upon such complaint."

It is of course beyond the scope of this work to discuss the jurisdiction of the Railway and Canal Commissioners. The following powers of the Commissioners to entertain complaints may, however, be mentioned. They have power to entertain complaints of a breach of the provisions of sect. 2 of the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31) and the amending legislation, whereby railway and canal companies are required to give facilities for receiving, forwarding, and delivering their own traffic: to abstain from giving undue preference to any particular person, company, or traffic; to give facilities for through traffic; and to make arrangements for through rates. They have also power under sect. 9 of the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25) to entertain complaints of a breach of any enactment in a special Act, containing provisions relating to traffic facilities, undue preference, &c.; requiring a railway or canal company to provide any station, road, or other similar work for public accommodation; or otherwise imposing on such a company any obligation in favour of the public or any individual.

By sect. 16 of the Railway and Canal Traffic Act, 1888, where the Board of Trade or the Railway and Canal Commissioners, in the exercise of any power given by any general or special Act, on application, order a railway or canal company "to provide a bridge, subway, or approach, or any work of a similar character, the Board of Trade or the Commissioners, as the case may be, may require as a condition of making the order that an agreement to pay the whole or a portion of the expenses of complying with the order shall be entered into by the applicants or some of them, or such other persons as the Board of Trade or the Commissioners think fit, and any of the following local authorities, namely, any sanitary authority, highway board, surveyor of highways acting with the consent of the vestry of his parish, or any other authority having power to levy rates, shall have

power, if such authority think fit, to enter into any such agreement as is sanctioned by the Board of Trade or Commissioners for the purpose of the order. In such case any question respecting the persons by whom or the proportions in which the expenses of complying with the order are to be defrayed may, on the application of any party to the application, or on a certificate of the Board of Trade, be determined by the Commissioners." It is clear that the council of a metropolitan borough will have the powers of a local authority under this enactment, if not as the surveyor of highways, at all events as an authority having power to levy rates.

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By sect. 54 of the same Act:—

"(1) Where any local authority have power under this Act to make or oppose any complaint to the Commissioners, or the Board of Trade, or to enter into any agreement to pay the whole or a portion of the expenses of complying with an order of the Commissioners or the Board of Trade, or to make any application for the abandonment or acquisition of a canal under this Act, incur any expenses in or incidental to such complaint, opposition, agreement, or application, such expenses may be defrayed out of the rates or funds out of which the expenses incurred by such authority in the execution of their ordinary duties are defrayed . . . ."

"(2) A local authority may enter into any contract involving the payment by themselves and their successors of any expenses authorised by this section to be defrayed.

"(3) Where any such local authority have no power to borrow money for the purpose of defraying any expenses authorised by this section, such authority, if other than a surveyor of highways, may, with the consent of the Board of Trade in the case of any harbour board or conservancy authority, and with the consent of the Local Government Board in the case of any other authority, borrow money in manner provided by the Local Loans Act, 1875, on the security of the rates or funds out of which the expenses are authorised to be defrayed, and the prescribed period for the loan shall be such period as the Board giving such consent may approve.

"(4) On the request of any board whose consent is required for such loan, the Board of Trade or Commissioners shall certify such particulars respecting the amount of the said expenses and the propriety of incurring the same and of borrowing for the payment thereof as may be requested by such board."

The local authorities mentioned in sect. 7 of the Railway and Canal Traffic Act, 1888, have power under sect. 31 of that Act to make certain complaints to the Board of Trade, and under sect. 45 of that Act they have certain powers in relation to unnecessary or derelict canals. It is, however, submitted that the council of a metropolitan borough will not enjoy these powers.

**Acquisition of Land.**—Sect. 65 of the Local Government Act, 1888, is concerned with the acquisition of land by a county council. It is as follows:—

"(1.) A county council may, from time to time, for the purpose of any of their powers and duties, including those which are to be executed through the standing joint committee, acquire, purchase, or take on lease, or exchange any lands or any easements or rights over or in land, whether situate within or without the county, and may acquire, hire, erect, and furnish such halls, buildings, and offices as

(1) The rest of the sub-section refers to rural authorities.

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c. 14. county.

Sched. II., “(2.) For the purpose of the purchase, taking on lease, or exchange  
Part II., n. of such lands, sections one hundred and seventy-six, one hundred  
and seventy-seven, and one hundred and seventy-eight of the Public  
Health Act, 1875, shall apply as if they were herein re-enacted, and  
in terms made applicable to the county council.

“(3.) Where the county council, with the consent of the Local  
Government Board, sell any land, the proceeds of such sale shall be  
applied in such manner as the said Board sanction towards the dis-  
charge of any loan of the council, or otherwise for any purpose for  
which capital may be applied by the council.”

The sections of the Public Health Act, 1875, incorporated with  
sub-sect. (2) of the above section are as follows:—

Sect. 176. “With respect to the purchase of lands by a local  
authority for the purposes of this Act, the following regulations shall  
be observed; (that is to say,)

“(1.) The Lands Clauses Consolidation Acts, 1845, 1860, and  
1869, shall be incorporated with this Act, except the pro-  
visions relating to access to the special Act, and except  
section one hundred and twenty-seven of the Lands Clauses  
Consolidation Act, 1845:

“(2.) The local authority, before putting in force any of the  
powers of the said Lands Clauses Consolidation Acts  
with respect to the purchase and taking of lands otherwise  
than by agreement, shall

Publish once at the least in each of three consecutive weeks  
in the month of November, in some local newspaper  
circulated in their district, an advertisement describing  
shortly the nature of the undertaking in respect of  
which the lands are proposed to be taken, naming a  
place where a plan of the proposed undertaking may  
be seen at all reasonable hours, and stating the  
quantity of lands that they require; and shall further

Serve a notice in the month of December on every  
owner or reputed owner, lessee or reputed lessee and  
occupier of such lands, defining in each case the par-  
ticular lands intended to be taken, and requiring an  
answer stating whether the person so served assents,  
dissents, or is neuter in respect of taking such lands:

“(3.) On compliance with the provisions of this section with  
respect to advertisements and notices, the local authority  
may, if they think fit, present a petition under their seal  
to the Local Government Board. The petition shall state  
the lands intended to be taken, and the purposes for which  
they are required, and the names of the owners lessees and  
occupiers of lands who have assented dissented or are  
neuter in respect of the taking such lands, or who have  
returned no answer to the notice; it shall pray that the  
local authority may, with reference to such lands, be  
allowed to put in force the powers of the said Lands  
Clauses Consolidation Acts with respect to the purchase  
and taking of lands otherwise than by agreement, and such  
prayer shall be supported by such evidence as the Local  
Government Board requires:

“(4.) On the receipt of such petition and on due proof of the

proper advertisements having been published and notices served the Local Government Board shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners lessees and occupiers thereof:

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- “(5.) After the completion of such inquiry the Local Government Board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served:

“Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer, shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given; and any notices or orders by this section required to be served on a number of persons having any right in over or on lands in common may be served on any three or more of such persons on behalf of all such persons.”

Sect. 177. “Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same.”

Sect. 178. “The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit, (but subject and without prejudice to the rights of any lessee tenant or occupier,) from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to Her Majesty her heirs or successors in right of the said duchy, or any right interest or easement in through over or on any such lands which for the purposes of this Act such local authority from time to time deem it expedient to purchase; and on payment of the purchase-money, as provided by the Duchy of Lancaster Lands Act, 1855, the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of Her Majesty her heirs or successors the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855.”

The Lands Clauses Consolidation Acts, 1845, 1860 and 1869 (8 & 9 Vict. c. 18; 23 & 24 Vict. c. 106; and 32 & 33 Vict. c. 18) referred to in sub-sect. (1) of sect. 176 of the Public Health Act, 1875, have been amended by the Lands Clauses (Umpire) Act, 1883 (46 Vict. c. 15) and the Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11). It is of course beyond the scope of this work to discuss these Acts.

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It is the practice of the Local Government Board in the autumn of each year to issue instructions to local authorities under the Public Health Act, 1875, with reference to applications for provisional orders under sect. 176 of that Act. These instructions describe with great minuteness the manner in which the authority should proceed, and call attention to the Standing Orders of the Houses of Parliament with which it is necessary that the local authority should comply. The Instructions issued in 1898 will be found in Glen's "Law of Public Health" (12th Ed.), vol. II. p. 2011.

Standing Orders of the Houses of Parliament (H. L. 111; H. C. 183 A.), which are not quoted in these instructions, require that in any Bill giving power to acquire land clauses shall be inserted prohibiting the taking of more than a certain number of houses occupied by persons belonging to the labouring class as tenants or lodgers, unless and until a scheme for providing new dwellings for the persons residing in those houses has been approved and the promoters have given security for carrying out the scheme, and containing certain consequential provisions. Clauses of this kind will be found in many Acts confirming provisional orders under sect. 176 of the Public Health Act, 1875.

The local authority are not bound to purchase land with reference to which they have obtained a provisional order. See *Burges v. Bristol Urban Sanitary Authority* (1886), 50 J. P. 455.

The procedure with reference to the assessment of compensation where land is purchased under sect. 176 of the Public Health Act, 1875, is wholly governed by the provisions of the Lands Clauses Acts, and the provisions of the Public Health Act as to the assessment of compensation do not apply. See *Ex parte Rayner* (1878) 3 Q. B. D. 446; 47 L. J. Q. B. 660; 39 L. T. 232; 42 J. P. 807.

Borough councils will, in addition to their power of acquiring land under the enactments discussed above, have various special powers of acquiring land for particular purposes.

The most important powers of the kind will be those which they will have as successors of the administrative vestries and district boards under sects. 80-96 of the Metropolitan Paving Act, 1817 (57 Geo. 3 c. xxix.) as extended to the metropolis generally by sect. 73 of the Metropolitan Management Amendment Act, 1862 (25 & 26 Vict. c. 102).

Under these enactments the borough councils will have compulsory powers for the purchase of land required for street improvements without its being necessary for them to obtain any special authority in the particular case from Parliament or otherwise.

**Working Class Lodging Houses.**—Part III. of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70) which comprises sects. 53-71 of that Act, is concerned with the provision of lodging houses for the working classes.

By sect. 53 "(1.) The expression 'lodging houses for the working classes' when used in this part of this Act shall include separate houses or cottages for the working classes, whether containing one or several tenements, and the purposes of this part of this Act shall include the provision of such houses and cottages.

"(2.) The expression 'cottage' in this part of this Act may include a garden of not more than half an acre, provided that the estimated annual value of such garden shall not exceed three pounds."

By sect. 54 "This part of this Act may be adopted in the several



districts mentioned in the first schedule to this Act by the local authorities in that behalf in that schedule mentioned. . . .”

The rest of sect. 54 and sect. 55 deal with the adoption of the Act by a rural authority.

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By sect. 56 “Where this part of this Act has been adopted in any district, the local authority shall have power to carry it into execution (subject to the provisions of this part of this Act with respect to rural sanitary authorities), and for that purpose may exercise the same powers whether of contract or otherwise as in the execution of their duties in the case of the London County Council under the Metropolis Management Act, 1855, and the Acts amending the same, or in the case of sanitary authorities under the Public Health Acts, or in the case of the Commissioners of Sewers under the Acts conferring powers on such Commissioners.”

By sect. 57 “(1.) Land for the purposes of this part of this Act may be acquired by a local authority in like manner as if those purposes were purposes of the Public Health Act, 1875, and sections one hundred and seventy-five to one hundred and seventy-eight, both inclusive, of that Act (relating to the purchase of lands), shall apply accordingly, and shall for the purposes of this part of this Act extend to London in like manner as if the Commissioners of Sewers and London County Council respectively were a local authority in the said sections mentioned, and a Secretary of State were substituted for the Local Government Board.

“(2.) The local authority may, if they think fit, contract for the purchase or lease of any lodging houses for the working classes already, or hereafter to be built and provided.

“(3.) The local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the land is situate, appropriate, for the purposes of this part of this Act, any lodging houses so purchased or taken on lease, and any other land which may be for the time being vested in them, or at their disposal.”

By sect. 58 “The trustees of any lodging houses for the working classes for the time being provided in any district by private subscriptions or otherwise, may, with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the lodging houses to the local authority of the district, or make over to them the management thereof.”

By sect. 59 “The local authority may, on any land acquired or appropriated by them, erect any buildings suitable for lodging houses for the working classes, and convert any buildings into lodging houses for the working classes, and may alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.”

By sect. 60 “A local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the land is situate, sell any land vested in them for the purposes of this part of this Act, and apply the proceeds in or towards the purchase of other land better adapted for those purposes, and may in like manner and with the like consent exchange any land so vested in them for land better adapted to the purposes of this part of this Act, either with or without paying or receiving any money for equality of exchange.”

By sect. 61 “(1.) The general management, regulation, and control

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of the lodging houses established or acquired by a local authority under this part of this Act shall be vested in and exercised by the local authority.

"(2.) The local authority may make such reasonable charges for the tenancy or occupation of the lodging houses provided under this part of this Act as they may determine by regulations."

By sect. 62 "(1.) The local authority may make bye-laws for the management, use, and regulation of the lodging houses, and it shall be obligatory on the local authority, except in the case of a lodging house which is occupied as a separate dwelling, by such bye-laws to make sufficient provision for the several purposes expressed in the sixth schedule to this Act.

"(2.) A printed copy or sufficient abstract of the bye-laws relating to the management, use, and regulation of the lodging houses shall be put up and at all times kept in every room therein."

By sect. 63 "Any person who, or whose wife or husband, at any time while such person is a tenant or occupier of any such lodging house, or any part of such a lodging house, receives any relief under the Acts relating to the relief of the poor other than relief granted on account only of accident or temporary illness, shall thereupon be disqualified for continuing to be such a tenant or occupier."

By sect. 64 "Whenever any lodging houses established for seven years or upwards under the authority of this part of this Act are determined by the local authority to be unnecessary or too expensive to be kept up, the local authority may, if not a rural sanitary authority with the consent of the Local Government Board, and if a rural sanitary authority with the consent of the county council of the county in which the lodging houses are situate, sell the same for the best price that can reasonably be obtained for the same, and the local authority shall convey the same accordingly."

By sect. 65 "All expenses incurred by a local authority in the execution of this part of this Act shall be defrayed—

- (i.) in the case of an authority in the administrative county of London, out of the Dwelling House Improvement Fund under Part I. of this Act;
- (ii.) in the case of an urban sanitary authority as part of the general expenses of their execution of the Public Health Acts; and
- (iii.) in the case of a rural sanitary authority. . . ."

By sect. 66 "The London County Council and the Commissioners of Sewers may borrow for the purpose of the execution of this part of this Act, in like manner and subject to the like conditions as they may borrow for the purposes of Part I. of this Act, and a sanitary authority may borrow for the purpose of the execution of this part of this Act in like manner and subject to the like conditions as for the purpose of defraying the above-mentioned general or special expenses."

Sect. 67 enables the Public Works Loan Commissioners to lend to railway companies and other companies, and to corporations and private persons, money required for the construction or improvement of dwellings for the working classes.

Sect. 68 gives power to railway companies and other companies and to corporations to provide dwellings for the accommodation of persons belonging to the labouring classes.

The provision in the present schedule enabling the council of a metropolitan borough to exercise the power that the London County Council possess of adopting Part III. of the Housing of the Working Classes Act, 1890, must of course be read as giving them power also to carry out the purposes of that part of the Act where they have

adopted it. But as to how they are to carry out these purposes there is much doubt and difficulty, since almost all the sections above quoted require modification to fit them to cases in which the council of a metropolitan borough act as local authority, and no such modification is made by the present Act.

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Possibly, however, the necessary modifications might be made by a scheme under the present Act.

**Note.—Bye-laws for Good Rule & Government of Borough, and Suppression of Nuisances.**—Sect. 23 of the Municipal Corporations Act, 1882, is as follows:—

“(1.) The council may, from time to time, make such bye-laws as to them seem meet for the good rule and government of the borough, and for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough, and may thereby appoint such fines, not exceeding in any case five pounds, as they deem necessary for the prevention and suppression of offences against the same.

“(2.) Such a bye-law shall not be made unless at least two-thirds of the whole number of the council are present.

“(3.) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof has been fixed on the town hall.

“(4.) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof, sealed with the corporate seal, has been sent to the Secretary of State; and if within those forty days the Queen, with the advice of her Privy Council, disallows the bye-law or part thereof, the bye-law or part disallowed shall not come into force; but it shall be lawful for the Queen, at any time within those forty days, to enlarge the time within which the bye-law shall not come into force, and in that case the bye-law shall not come into force until after the expiration of that enlarged time.

“(5.) Any offence against such a bye-law may be prosecuted summarily.

“(6.) Nothing in this section shall interfere with the operation of section one hundred and eighty-seven of the Public Health Act, 1875; and that section shall have effect as if this section were therein referred to, instead of section ninety of the Municipal Corporations Act, 1835; but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal Corporations Act, 1835, or as restricting the meaning or scope of this section, with respect to prevention or suppression of nuisances.”

Sect. 16 of the Local Government Act, 1888, by which this section is extended to county councils, is as follows:—

“(1.) A county council shall have the same power of making bye-laws in relation to their county, or to any specified part or parts thereof, as the council of a borough have of making bye-laws in relation to their borough under section 23 of the Municipal Corporations Act, 1882, and section 187 of the Public Health Act, 1875, shall apply to such bye-laws.

“(2.) Provided that bye-laws made under the powers of this section shall not be of any force or effect within any borough.”<sup>1</sup>

Sect. 187 of the Public Health Act, 1875, which is referred to both in sect. 23 of the Act of 1882, and in sect. 16 of the Act of 1888,

(1) Sub-section (2) has, of course, no application to London, since a metropolitan borough is not a “borough” within the meaning of the Act of 1888; see sect. 31 (1) of the Local Government Act.

62 & 63 Vict. c. 14.  
Sched. II,  
Part II., n.

provides, as altered in accordance with sect. 23 (6) of the Act of 1882, by substituting a reference to that section for a reference to sect. 90 of the Municipal Corporations Act, 1835, as follows:—

“Bye-laws made by the council of any borough under the provisions of [sect. 23 of the Municipal Corporations Act, 1882] for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to bye-laws shall apply to the bye-laws so made as if they were made under this Act.”

The bye-laws that may be made under these enactments fall into two categories, firstly, bye-laws for the good rule and government of the area, and, secondly, bye-laws for the suppression of nuisances.

In practice bye-laws of the former class made by a county council are made in accordance with sub-sects. (2)–(4) of sect. 23 of the Municipal Corporations Act, 1882, and are not formally confirmed by any government department, though of course, having regard to sub-sect. (4) of that section they are practically sanctioned by the Home Office.

It is, however, no doubt arguable that the provision in sect. 16 of the Local Government Act, 1888, that sect. 187 of the Public Health Act, 1875, shall apply to bye-laws made under it, renders the provisions of the Act of 1875 applicable to such bye-laws and, *inter alia*, necessitates their confirmation by the Local Government Board.

In *Kruse v. Johnson*, *infra*, Lord Russell of Killowen, C.J. used language which appears to show that he considered that both the provisions of sub-sects. (2)–(4) of sect. 23 of the Act of 1882, and the provisions of the Public Health Act, 1875, apply to such bye-laws; so that they both require confirmation by the Local Government Board and are subject to disallowance by Order in Council on the advice of a Secretary of State. The point was, however, not before the Court, and it is submitted that this interpretation of the legislation cannot be correct. As a matter of fact, moreover, the bye-law in question in *Kruse v. Johnson*, a conviction under which was there sustained, had not been confirmed by the Local Government Board.

In *Strickland v. Hayes*, *post*, p. 222, on the other hand, according to some of the reports, Lindley, L. J. expressed the opinion that bye-laws of the kind do not require the sanction of the Local Government Board, thus approving the view that has been adopted in practice.

It is well settled law that, in order to be binding, a bye-law, unless made under a statute so worded as to prevent the validity of the bye-law from being open to question in a court of law, must be “reasonable.” And numerous cases as to the reasonableness of bye-laws made by councils of municipal boroughs and county councils under the enactments in question, or the earlier enactments replaced by sect. 23 of the Act of 1882, for the good rule and government of the borough or county have been before the Court. The earlier decisions were, however, really quite irreconcilable with each other, and in order to have an authoritative decision with reference to bye-laws of the kind, a special court of seven judges was convened to consider a case (*Kruse v. Johnson* [1898] 2 Q. B. 91; 67 L. J. Q. B. 782; 78 L. T. 647; 46 W. R. 630; 62 J. P. 469), in which the question was as to the validity of a bye-law made by the County Council of Kent in the following terms:—“No person shall sound or play upon any musical or noisy instrument or sing in any public place or highway within fifty yards of any dwelling-house after being required by any constable, or by an inmate of such house personally,

or by his or her servant, to desist." By a majority of the Court, 62 & 63 Vict. Mathew J. dissenting, it was held that the bye-law was good, and Lord Russell of Killowen, C.J., in whose judgment Chitty L.J. and Wright, Darling and Channell, JJ., concurred, after discussing the enactments under which the bye-law was made and the safeguards imposed by those enactments, said:—"When the Court is called upon to consider the bye-laws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned, I think the consideration of such bye-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canon of construction. But, further, looking to the character of the body legislating under the delegated authority of Parliament, to the subject-matter of such legislation, and to the nature and extent of the authority given to deal with matters which concern them, and in the manner which to them shall seem meet, I think courts of justice ought to be slow to condemn as invalid any bye-law so made under such conditions, on the ground of supposed unreasonableness. . . . I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn bye-laws, made under such authority as these were made, as invalid because unreasonable. But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust: if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, 'Parliament never intended to give authority to make such rules: they are unreasonable and *ultra vires*.' But it is in this sense, and in this sense only, as I conceive, that the question of unreasonableness can properly be regarded. A bye-law is not unreasonable merely because particular judges may think that it goes farther than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there."

Though the authority of the earlier cases has been almost entirely abrogated by the decision in *Kruse v. Johnson*, it may be convenient to summarise them very shortly.

In *Elwood v. Bullock* (1844) 6 Q. B. 383; 13 L. J. Q. B. 330: 8 Jur. 1044, a bye-law providing that no person should erect any booth, or place any caravan for the purpose of any show or entertainment, in any public place within a borough, without the licence of the mayor, and that any such licence given at any other time than fair time should be revoked by the mayor, if three inhabitant householders residing within one hundred yards of the place for which it was granted should memorialise the mayor to revoke it, was held to be bad.

In *Everett v. Grapes* (1861) 3 L. T. 669, a bye-law prohibiting the keeping of swine within a borough was held to be bad.

In *Reg. v. Pozvell* (1884) 51 L. T. 92; 48 J. P. 740, a bye-law prohibiting a person from playing upon a musical instrument or making any noise in any street or near any house, after having been required by any householder resident in such street or house, or by any police constable to desist, either on account of any illness of any inmate of such house, or for any reasonable cause, was held to be good.

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c. 14.  
Sched. II.,  
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In *Johnson v. Croydon Corporation* (1886) 16 Q. B. D. 708; 55 L. J. M. C. 117; 54 L. T. 295; 50 J. P. 487, a bye-law providing that "no person not being a member of Her Majesty's Army or Auxiliary Forces, acting under the orders of his commanding officer, shall sound or play upon any musical instrument in any of the streets in the borough on Sunday," was held bad.

In *Macdonald v. Lochrane* (1887) 51 J. P. 629, a bye-law imposing penalties on parents for permitting children to sell articles in the streets of a borough after a certain hour in the evening was held to be bad.

In *Munro v. Watson* (1887) 57 L. T. 366; 51 J. P. 660, a bye-law imposing a penalty on any person who should in any street sound or play upon any musical or noisy instrument, or should sing, recite, or preach in any street without a licence in writing from the mayor, was held to be bad.

In *Strickland v. Hayes* [1896] 1 Q. B. 290; 65 L. J. M. C. 55; 34 L. T. 137; 44 W. R. 398; 60 J. P. 164, a bye-law providing that no person should "in any street or public place, or on land adjacent thereto, sing or recite any profane or obscene song or ballad, or use any profane or obscene language," was held to be bad.

In *Walker v. Stretton* (1896) 44 W. R. 525; 60 J. P. 313, a bye-law requiring any person driving or having charge of a vehicle, with certain exceptions, to carry attached to the vehicle a lighted lamp, during the period from one hour after sunset to 2 A.M., except between the rising and setting of the moon, was held to be good. And a somewhat similar bye-law was upheld in *Williams v. Groves* (1896) 12 Times L. R. 450.

In *Burnett v. Berry* [1896] 1 Q. B. 641; 65 L. J. M. C. 118; 74 L. T. 494; 44 W. R. 512; 60 J. P. 375, a bye-law imposing a penalty on "any person who shall frequent and use any street or other public place within the borough of W. for the purpose of bookmaking or betting or wagering, or agreeing to bet or wager, with any person," was held good. And very similar bye-laws were upheld in *Godwin v. Walker* (1896) 60 J. P. 308n., and *Jones v. Walters* (1898) 78 L. T. 167; 62 J. P. 374.

In *Teale v. Harris* [1896] 60 J. P. 744, a bye-law in the following terms:—"No person shall, to the annoyance or disturbance of residents or passengers, keep or manage a shooting gallery, swing-boat, roundabout, or other like thing, in any street or public place, or on land adjoining or near to such street or public place, provided that this bye-law shall not apply to any fair lawfully held"—was held good.

In *Mantle v. Jordan* [1897] 1 Q. B. 248; 66 L. J. Q. B. 224; 75 L. T. 552; 61 J. P. 119, a bye-law providing that no person should "in any house, building, garden, land, or other place, abutting on, or near to, a street or public place, make use of any violent, abusive, profane, indecent, or obscene language, gesture, or conduct, to the annoyance of any person in such street or public place," was held good.

The power to make bye-laws for the suppression of nuisances under the enactments under consideration is now very rarely exercised; the stringency of the modern statute law with reference to nuisances practically removing the necessity for such bye-laws. The provisions of the Public Health Act, 1875, applicable to such bye-laws are contained in sects. 182-187 of that Act.

The bye-laws that the council of a borough will have power to make under the enactments in question are not to be "inconsistent with any bye-laws made by the county council."

There is, however, no corresponding provision prohibiting the county council from making a bye-law inconsistent with a bye-law previously made by a borough council, nor any provision enabling a county council to abrogate a bye-law made by a borough council where they, the county council, desire to make a bye-law inconsistent with it. The absence of some provision of the kind may not im-

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c. 14.  
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probably lead to difficulties. The bye-laws made by the London County Council under the enactments in question and at present in force are as follows:—

1.—“(a) No person shall in any street or on any land adjoining or near thereto, use or play, or cause to be used or played, any steam organ or other musical instrument worked by mechanical means to the annoyance or disturbance of residents or passengers.

“(b) No person shall in any street or on any land adjoining or near thereto, keep or manage, or cause to be kept or managed, a shooting gallery, swing boat, roundabout, or any other construction of a like character, so as to cause obstruction or danger to the traffic of any such street.

2.—“No person shall keep within any house, building or premises, any noisy animal which shall be or cause a serious nuisance to residents in the neighbourhood. Provided that no proceedings shall be taken against any person for an offence against this bye-law until after the expiration of a fortnight from the date of the service on such person of a notice alleging a nuisance, signed by not less than three householders residing within hearing of the animal.

3.—“Every carriage, cart, waggon, or other vehicle which shall be driven or be upon any highway during the period between one hour after sunset and one hour before sunrise, shall be provided with a lamp or lamps which shall be so constructed and placed (such lamp or one of such lamps being on the right or off side of the carriage, cart, waggon, or other vehicle), as to exhibit a white light in the direction in which the vehicle proceeds, and shall be so lighted and kept lighted as to afford adequate means of signalling the approach or position of the vehicle.

“This bye-law shall not apply to any carriage which is required to carry lights by any statutory enactment, or by any rule, regulation or order made under any statutory enactment, and for the time being in force.

4.—“No person shall frequent and use any street or other public place on behalf, either of himself or of any other person, for the purpose of bookmaking or betting, or wagering, or agreeing to bet or wager with any person, or paying, or receiving, or settling bets.

5.—“Any person who shall offend against any of the foregoing bye-laws shall be liable for every such offence to a fine not exceeding forty shillings, except in the case of the bye-law relating to street betting, the fine for the breach of which shall be an amount not exceeding £5.”

62 & 63 Vict.  
c. 14.  
Sched. III.

### THIRD SCHEDULE.

Section 35  
(2).

#### ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
6 & 7 Vict. c. 18.	The Parliamentary Voters (Registration) Act, 1843.	In section fifty-six, the words "or to the town clerk of the borough of Southwark" and the words "and in regard to the borough of Southwark the high bailiff of the said borough."
18 & 19 Vict. c. 120.	The Metropolis Management Act, 1855.	<p>Sections two and three. Section five. Section seven. Section eight, from the beginning to "shall be elected and," and the words "with such other persons as hereinbefore mentioned." Sections eleven and twelve. Section twenty-eight to "every such meeting." Section twenty-nine. Sections thirty-one to forty-two. Sections fifty-five and fifty-six. Sections fifty-seven, fifty-eight, sixty, sixty-one and sixty-six, so far as they relate to district boards and their districts, and section fifty-eight, from "Provided always" to the end of the section. Section ninety-one, from "save as regards" to "any of the said Acts; and." Section one hundred and fifty-four, from "may sell and dispose of any land" to "just; and any such board or vestry," except in so far as it applies to the Metropolitan Board of Works.</p>



Session and Chapter.	Short Title.	Extent of Repeal.	62 & 63 Vict. c. 14. Sched. III.
18 & 19 Vict. c. 120— <i>cont.</i>	The Metropolis Management Act, 1855— <i>cont.</i>	<p>Section one hundred and fifty-eight, from “but every such vestry.”</p> <p>Sections one hundred and sixty-one to one hundred and sixty-five</p> <p>Sections one hundred and sixty-six to one hundred and sixty-nine.</p> <p>Sections one hundred and seventy-two to one hundred and seventy-four.</p> <p>Sections one hundred and seventy-five to one hundred and seventy-nine.</p> <p>Sections one hundred and ninety-two to one hundred and ninety-seven.</p> <p>In section one hundred and ninety-eight, the words “the said account in abstract” to “printed therewith,” and the words “account in abstract, statement, and” wherever they occur.</p> <p>In section one hundred and ninety-nine, the words “according to the provisions of this Act.”</p> <p>Section two hundred and thirty-seven, from “nor shall such parts” to “cleansing.”</p> <p>Section two hundred and thirty-eight.</p>	
25 & 26 Vict. c. 102.	The Metropolis Management Amendment Act, 1862.	<p>In section eight, the words “and the precepts for obtaining payment of moneys required by the board for that purpose.”</p> <p>Sections nine to twelve.</p> <p>Section fourteen.</p> <p>Section fifteen, so far as it relates to vestries and district boards.</p> <p>Section sixteen.</p> <p>Section thirty-seven, so far as it relates to district boards.</p> <p>Section thirty-eight.</p> <p>Section forty.</p> <p>Section forty-one.</p>	

62 & 63 Vict.  
c. 14.  
Sched. III.

Session and Chapter.	Short Title.	Extent of Repeal.
25 & 26 Vict. c. 102— <i>cont.</i>	The Metropolis Management Amendment Act, 1862 — <i>cont.</i>	In section fifty-six, the words “out of the sewers rate to be levied in their parish or district.” In section eighty-four, the words “with the previous sanction of the Metropolitan Board of Works” and the words “allowed by the Metropolitan Board.” The forms of precept in Schedule C.
48 & 49 Vict. c. 23.	The Redistribu- tion of Seats Act, 1885.	In section twelve the words “and also the town clerk for the new borough within the meaning of the Registra- tion Acts.”
54 & 55 Vict. c. 76.	The Public Health (Lon- don) Act, 1891.	Sections one hundred and two one hundred and forty, and the Second Schedule.
55 & 56 Vict. c. 53.	The Public Li- braries Act, 1892.	Section twenty-two.
56 & 57 Vict. c. 73.	The Local Go- vernment Act, 1894.	In section thirty-one, the words “the local board of Wool- wich and”; the words “and the auditors for parishes elected under those Acts, and so far as respects the qualification of persons to be elected as if members of the district boards under the said Acts,” and the words “and no person shall ex officio be chairman of any of the said vestries”; and sub-section (2). At the end of section forty-six, the words “and in the case of London auditors as if they were members of a district council.” In section forty-eight, sub- section (4), the words “and of members of the local board of Woolwich”; and

Session and Chapter.	Short Title.	Extent of Repeal.	62 & 63 Vict. c. 14. Sched. III.
56 & 57 Vict. c. 73— <i>cont.</i>	The Local Government Act, 1894— <i>cont.</i>	in sub-section (5), the words “local board or” and “or auditor.”	
56 & 57 Vict. c. ccxxi.	The London County Council (General Powers) Act, 1893.	Section fifteen.	
58 & 59 Vict. c. cxxvii.	The London County Council (General Powers) Act, 1895.	Section forty-two.	

## APPENDIX.

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### TABLE OF AREAS.

THE following Table of Areas is taken from a return laid by the London County Council before the Commissioners appointed in 1893 to inquire into the conditions upon which the amalgamation of the City and County of London can be effected.

The return is not dated, but appears to have been made in 1894.

Some changes of area that have been made since the return are referred to in the notes to the Table. It is possible that there have been other changes of area since that date, of which the writer is unaware.

The first column of the Table shows the parishes in London. The second column shows the poor law unions. The letters P and U show whether the poor law union is a single parish under a separate board of guardians or a union of two or more parishes. The third column shows the local government areas—that is, the areas under the administrative vestries and district boards and co-ordinate authorities. The letters A, B and C in this column refer to the schedules to the Metropolis Management Act, 1855, as amended. The notes show the Acts by which these schedules have been amended. The fourth column shows the Parliamentary divisions of the several Parliamentary boroughs in London. Each of the divisions (except the City of London, which returns two members) returns one member of Parliament. The Parliamentary divisions also serve as electoral divisions of the administrative county of London for the purpose of the election of members of the London County Council, each division (except the City, which returns four) returning two county councillors.

The last column shows the Parliamentary boroughs.

The different areas are arranged so that the parishes constituting each of the areas appear opposite that area, and the horizontal lines show where areas are coterminous, and, where they are not coterminous, to some extent the respects in which they differ. The dotted horizontal lines are merely inserted to guide the eye.

An alphabetical index to the various areas is prefixed to the Table.

## INDEX TO TABLE.

	Reference No. of Parish.	Reference No. of Poor Law Union.	Reference No. of Local Govern- ment Area.	Reference No. of Parlia- mentary Division.	Reference No. of Parlia- mentary Borough.
Aldgate . . . . .	40	..	..	..	..
Battersea . . . . .	57	..	30	46	20
Bernondsey . . . . .	67	..	35	52	..
Bethnal Green . . . . .	3	3	3	3, 4	3
Bow . . . . .	35	..	..	41	..
Brixton . . . . .	..	..	..	23	..
Bromley . . . . .	34	..	..	41	..
Camberwell . . . . .	11	11	11	25	..
Charlton . . . . .	78	..	..	..	11
Charterhouse . . . . .	55	..	..	..	..
Chelsea . . . . .	1	1	1	1	1
Christchurch, Southwark	65	..	..	..	..
"    Spitalfields	42	..	..	..	..
City of London . . . . .	83	30	43	58	28
Clapham . . . . .	58	..	..	47	..
Clerkenwell . . . . .	56	..	29	..	..
Deptford, St. Nicholas . .	81	..	..	..	..
"    St. Paul . . . . .	82	..	..	57	27
Dulwich . . . . .	..	..	..	27	..
Eltham . . . . .	75	..	..	..	..
Finsbury . . . . .	..	..	..	44, 45	19
Fulham . . . . .	14	13	14	31	13
Furnival's Inn . . . . .	49	..	..	..	..
Glasshouse Yard . . . . .	53	..	..	..	..
Gray's Inn . . . . .	47	..	..	..	..
Greenwich . . . . .	80	29	42	56	26
Hackney . . . . .	12	12	12	28-30	12
Haggerston . . . . .	..	..	..	16	..
Hammersmith . . . . .	15	..	15	32	14
Hampstead . . . . .	2	2	2	2	2
Holborn . . . . .	..	23	27	43	..
Horselydown . . . . .	71	..	..	..	..
Hoxton . . . . .	..	..	..	15	..
Inner Temple . . . . .	83	..	..	..	..
Islington . . . . .	7	7	7	11-14	7
Kennington . . . . .	..	..	..	22	..
Kensington . . . . .	5	5	5	7, 8	5
Kidbrooke . . . . .	79	..	..	..	..
Lambeth . . . . .	10	10	10	21	10
Lea . . . . .	74	..	39	..	..
Lewisham . . . . .	73	27	38	54	24
Lincoln's Inn . . . . .	32	..	23	39	..
Marylebone . . . . .	4	4	4	5, 6	4
Middle Temple . . . . .	83	..	..	..	..
Mile End, New Town . . .	36	..	..	..	..
"    Old Town . . . . .	27	17	21	36	..
Minories . . . . .	43	..	..	..	..
Newington . . . . .	63	..	32	49	22
Norton Folgate . . . . .	39	..	..	..	..
Notwood . . . . .	..	..	..	21	..
Old Artillery Ground . . .	38	..	..	..	..

## INDEX TO TABLE—continued.

	Reference No. of Parish.	Reference No. of Poor Law Area.	Reference No. of Local Government Union.	Reference No. of Parlia- mentary Division.	Reference No. of Parlia- mentary Borough.
Old Tower Without . . . . .	37	..	..	..	..
Paddington . . . . .	6	6	6	9, 10	6
Peckham . . . . .	..	..	..	26	..
Penge . . . . .	72	..	..	..	..
Plumstead . . . . .	77	..	41	..	..
Poplar . . . . .	33	20	24	40	..
Putney . . . . .	59	..	..	..	..
Ratcliff . . . . .	31	..	..	..	..
Rolls . . . . .	25	..	..	..	..
Rotherhithe . . . . .	48	..	..	36	53
Saffron Hill . . . . .	51	..	..	..	..
St. Andrew, Holborn . . . . .	50	..	..	..	..
St. Anne, Westminster . . . . .	20	..	..	..	..
St. Botolph, Aldersgate . . . . .	33	..	..	..	..
"    Aldgate . . . . .	40	..	..	..	..
St. Clement Danes . . . . .	24	..	..	..	..
St. George-in-the East . . . . .	28	18	22	38	..
St. George, Hanover } Square . . . . .	16	14	16	33	15
St. George, Southwark . . . . .	66	..	34	..	..
St. Giles and St. George . . . . .	45	22	26	..	..
St. James, Westminster . . . . .	19	..	18	..	..
St. Katherine . . . . .	41	..	..	..	..
St. Luke . . . . .	54	..	28	..	..
St. Margaret and St. John . . . . .	17	..	17	..	..
St. Martin-in-the-Fields . . . . .	26	..	20	..	..
St. Marylebone . . . . .	4	4	4	5, 6	4
St. Mary-le-Strand . . . . .	23	..	..	..	..
St. Olave . . . . .	69	26	37	..	..
St. Pancras . . . . .	9	9	9	17-20	9
St. Paul, Covent Garden . . . . .	21	..	..	..	..
St. Peter, Westminster . . . . .	18	..	..	..	..
St. Saviour, Southwark . . . . .	64	25	33	..	..
St. Sepulchre . . . . .	52	..	..	..	..
St. Thomas . . . . .	70	..	..	..	..
Savoy . . . . .	22	..	..	..	..
Shadwell . . . . .	30	..	..	..	..
Shoreditch . . . . .	8	8	8	..	8
Southwark . . . . .	..	..	..	51	23
Staple Inn . . . . .	48	..	..	..	..
Stepney . . . . .	..	19	..	37	..
Stoke Newington . . . . .	13	..	13	..	..
Strand . . . . .	..	16	19	35	17
Streatham . . . . .	60	..	..	..	..
Tooting . . . . .	61	..	..	..	..
Tower Hamlets . . . . .	..	..	..	..	12
Walworth . . . . .	..	..	..	50	..
Wandsworth . . . . .	62	24	31	48	21
Wapping . . . . .	29	..	..	..	..
Westminster . . . . .	..	15	..	34	16
Whitechapel . . . . .	44	21	25	42	..
Woolwich . . . . .	76	28	40	55	25

TABLE OF AREAS.

Parishes.	Poor Law Unions.	Local Government Areas.	Parliamentary Divisions.	Parliamentary Boroughs.
1. Chelsea, St. Luke . . .	1. Chelsea P.	1. Chelsea (A).	1. Chelsea.	1. Chelsea.
2. Hampstead, St. John . . .	2. Hampstead P.	2. Hampstead (A).	2. Hampstead.	2. Hampstead.
3. Bethnal Green, St. Mat- thew.	3. Bethnal Green P.	3. Bethnal Green (A).	3. North East Bethnal Green.	3. Bethnal Green.
			4. South West Bethnal Green.	
4. St. Marylebone . . .	4. Marylebone P.	4. Marylebone (A).	5. East Marylebone.	4. Marylebone.
			6. West Marylebone.	
5. Kensington, St. Mary Abbots.	5. Kensington P.	5. Kensington (A).	7. North Kensington.	5. Kensington.
			8. South Kensington.	
6. Paddington . . .	6. Paddington P.	6. Paddington (A).	9. North Paddington.	6. Paddington.
			10. South Paddington.	

TABLE OF AREAS—continued.

Parishes.	Poor Law Unions.	Local Government Areas.	Parliamentary Divisions.	Parliamentary Boroughs.
7. Islington, St. Mary .	7. Islington P.	7. Islington (A).	11. North Islington.	7. Islington.
			12. West Islington.	
			13. East Islington.	
			14. South Islington.	
8. Shoreditch, St. Leonard .	8. Shoreditch P.	8. Shoreditch (A). <sup>1</sup>	15. Hoxton.	8. Shoreditch.
			16. Haggerston.	
9. St. Pancras . . . .	9. St. Pancras P.	9. St. Pancras (A).	17. North St. Pancras.	9. St. Pancras.
			18. East St. Pancras.	
			19. West St. Pancras.	
			20. South St. Pancras.	
10. Lambeth, St. Mary .	10. Lambeth P.	10. Lambeth (A).	21. North Lambeth.	10. Lambeth.
			22. Kennington.	
			23. Brixton.	
			24. Norwood.	



11. Camberwell, St. Giles	11. Camberwell P.	11. Camberwell (A).	25. North Camberwell.	11. Camberwell.
	.. .. .	.. .. .	26. Peckham.	
	.. .. .	.. .. .	27. Dulwich.	
Penge Hamlet ( <i>see</i> No. 72)				
	In Croydon U.	In Lewisham District ( <i>see</i> No. 38).		
12. Hackney, St. John	12. Hackney U.	12. Hackney (A). <sup>2</sup>	28. South Hackney.	12. Hackney.
	.. .. .	.. .. .	29. Central Hackney.	
	.. .. .	.. .. .	30. North Hackney.	
13. Stoke Newington	.. .. .	13. Stoke Newington (A). <sup>2</sup>		
14. Fulham	13. Fulham U.	14. Fulham (A). <sup>2</sup>	31. Fulham.	13. Fulham.
15. Hammersmith	.. .. .	15. Hammersmith (A). <sup>2</sup>	32. Hammersmith.	14. Hammersmith.
16. Hanover Square, George	St. 14. St. George's U. ( <i>see</i> further over the page.)	16. St. George, Hanover Square (A).	33. St. George, Hanover Square.	15. St. George, Hanover Square.

<sup>1</sup> A small part of Shoreditch is under the jurisdiction of the Common Council of the City.

<sup>2</sup> The parishes of Hackney, Stoke Newington and Plumstead, together with the parishes now forming the Lee district, formerly constituted the Plumstead district. That district was dissolved and the Lee district formed, and the parishes of Hackney, Stoke Newington and Plumstead were placed under administrative vestries, by the Metropolitan Management (Plumstead and Hackney) Act, 1893 (56 & 57 Vict. c. 55).

<sup>3</sup> The parishes of Fulham and Hammersmith formerly constituted the Fulham district. The district was dissolved and the parishes were placed under administrative vestries by the Metropolitan Management Amendment Act, 1885 (48 & 49 Vict. c. 33).

TABLE OF AREAS—continued.

Parishes.	Poor Law Unions.	Local Government Areas.	Parliamentary Divisions.	Parliamentary Boroughs.
17. St. Margaret and St. John, Westminster . . .	14. St. George's U.— <i>continued</i>	17. St. Margaret and St. John, Westminster (A). <sup>1</sup>	34. Westminster.	16. Westminster.
18. Close of St. Peter . . .	.. .. .	Extra-parochial (C).		
19. St. James, Westminster . . .	15. Westminster U.	18. St. James, Westminster (A).	35. Strand.	17. Strand.
20. St. Anne, Soho . . .	.. .. .	19. Strand District (B).		
21. St. Paul, Covent Garden . . .	16. Strand U.			
22. Savoy Precinct . . .				
23. St. Mary-le-Strand . . .				
24. St. Clement Danes . . .				
25. Rolls Liberty . . .	.. .. .			
26. St. Martin-in-the-Fields . . .		20. St. Martin-in-the-Fields (A).		
27. Mile End Old Town Hamlet . . .	17. Mile End Old Town P.	21. Mile End Old Town (A).	36. Mile End. 37. Stepney.	12. Tower Hamlets. (see further over the page.)

28. St. George-in-the-East	18. St. - George - in - the - East P.	22. St. - George - in - the - East (A).	38. St. George.
29. Wapping	19. Stepney U.	23. Lincolns District (B).	39. Lincolns.
30. Shadwell	.. ..	.. ..	
31. Ratcliff	.. ..	.. ..	
32. Lincolns	.. ..	.. ..	
33. Poplar, All Saints	20. Poplar U.	24. Poplar District (B).	40. Poplar.
34. Bromley, St. Leonard	.. ..	.. ..	
35. Bow, St. Mary	.. ..	.. ..	41. Bow and Bromley.
36. Mile End New Town	21. Whitechapel U. (see further over the page.)	25. Whitechapel District (B). (see further over the page.)	42. Whitechapel. (see further over the page.)
37. Old Tower Without <sup>2</sup>	.. ..	.. ..	
38. Old Artillery Ground	.. ..	.. ..	
39. Norton Folgate	.. ..	.. ..	
40. St. Botolph Without, Aldgate. <sup>2</sup>	.. ..	.. ..	

<sup>1</sup> St. Margaret and St. John are or were to some extent separate parishes, and formerly constituted a district under a district board. The board was dissolved and the united parishes were placed under a single administrative vestry by the Metropolitan Management (Battersea and Westminster) Act, 1887 (50 & 51 Vict. c. 17).

<sup>2</sup> Old Tower Without and St. Katherine have been united to St. Botolph Without, Aldgate.

TABLE OF AREAS—*continued*.

Parishes.	Peer Law Unions.	Local Government Areas.	Parliamentary Divisions.	Parliamentary Boroughs.
41. St. Katherine. <sup>1</sup>	21. Whitechapel U.— <i>continued</i> .	25. Whitechapel (B).— <i>continued</i> .	42. Whitechapel.— <i>contd.</i>	12. Tower Hamlets.— <i>continued</i> .
42. Christchurch.	.. ..	Extra Parochial (C).		
43. Minorities. <sup>2</sup>	.. ..	In City of London ( <i>see</i> No. 43).		
44. Whitechapel, St. Mary (part).	.. ..	26. St. Giles District (B).	In City of London ( <i>see</i> No. 58).	In City of London ( <i>see</i> No. 28).
Tower of London . . .	22. St. Giles and St. George.	Extra-parochial (C).	43. Holborn.	19. Finsbury.
Whitechapel, St. Mary (part) .	In no Union.	Extra-parochial (C).		
15. St.-Giles-in-the-Fields and St. George, Bloomsbury	In no Union.	Extra-parochial (C).		
46. Lincoln's Inn . . .	23. Holborn U. ( <i>see</i> fur- ther below).	Extra-parochial (C).		
47. Gray's Inn . . .	.. ..	Extra-parochial (C).		
48. Staple Inn <sup>3</sup> . . .	.. ..	27. Holborn District (B).		
49. Furnival's Inn <sup>3</sup> . . .	.. ..			
50. St. Andrew and St. George	.. ..			

51. Saffron Hill, Hatton Garden, Ely Rents. <sup>1</sup>	..	..	..	..	..	44. East Finsbury.
52. St. Sepulchre . . .	..	..	..	..	..	
53. Glasshouse Yard <sup>2</sup> (St. Botolph, Aldersgate party) <sup>3</sup>	In City of London U. (see No. 30).					
54. St. Luke . . .	Holborn U. ( <i>continued</i> ).					28. St. Luke (A).
55. Charterhouse . . .	..	..	..	..	..	Extra-parochial (C).
56. St. James and St. John, Clerkenwell . . .	..	..	..	..	..	29. Clerkenwell (A).
57. Battersea, St. Mary . .	24. Wandsworth and Clapham U. (see further over the page.)	..	..	..	..	30. Battersea (A). <sup>6</sup>
58. Clapham . . .	..	..	..	..	..	31. Wandsworth District (B). <sup>6</sup> (see further over the page.)
						46. Battersea.
						47. Clapham.
						20. Battersea.

<sup>1</sup> Old Tower Without and St. Katherine have been united to St. Botolph Without, Aldgate.

<sup>2</sup> A small part of the Minorities known as "Frontages in Minorities" was under the jurisdiction of the City Commissioners of Sewers (now the Common Council of the City). The Minorities has been annexed to Whitechapel. But whether the jurisdiction of the Commissioners of Sewers was thereby affected the writer has failed to ascertain.

<sup>3</sup> The whole of Staple Inn and Furnival's Inn are in the Holborn Union, and are extra-parochial for local government purposes. Part, however, are in the City of London for Parliamentary purposes.

<sup>4</sup> Parts of Saffron Hill and Glasshouse Yard are under the jurisdiction of the Common Council of the City as successors of the City Commissioners of Sewers, though not in the City of London.

<sup>5</sup> The other and greater part of St. Botolph, Aldersgate, is in the City of London for all purposes.

<sup>6</sup> Battersea was separated from the Wandsworth district and placed under an administrative vestry by the Metropolitan Management (Battersea and Westminster) Act 1857 (20 & 21 Vict. c. 17).

TABLE OF AREAS—*continued*.

Parishes.	Poor Law Unions.	Local Government Areas.	Parliamentary Divisions.	Parliamentary Boroughs.
59. Putney . . . .	24. Wandsworth and Clapham U.— <i>contd.</i>	31. Wandsworth District— <i>continued</i> .	48. Wandsworth.	21. Wandsworth
60. Streatham.				
61. Tooting Graveney.				
62. Wandsworth.				
63. Newington, St. Mary .	25. St. Saviour's U.	32. Newington (A).	49. West Newington.	22. Newington.
64. St. Saviour's, Southwark .	.. .. .	33. St. Saviour's District (B).	50. Walworth.	
65. Christchurch.	.. .. .		51. West Southwark.	23. Southwark.
66. St.-George-the-Martyr .	.. .. .	34. St.-George-the-Martyr (A).		
67. Bermondsey, St. Mary .	26. St. Olave's U.	35. Bermondsey (A).	52. Bermondsey.	
68. Rotherhithe, St. Mary .	.. .. .	36. Rotherhithe (A).	53. Rotherhithe.	
69. St. Olave <sup>1</sup> . . . .	.. .. .	37. St. Olave's District (B).		
70. St. Thomas, Southwark. <sup>1</sup>				

71. St. John, Horselydown		In Croydon Union.	38. Lewisham District (B).	District .. .. .	In Dulwich ( <i>see</i> No. 27). No. 11).	Camberwell ( <i>see</i> No. 11).
72. Penge	. . . .					
73. Lewisham	. . . .	27. Lewisham U.			54. Lewisham.	24. Lewisham.
74. Lee	. . . .			39. Lee District (B) <sup>2</sup> ( <i>see further below</i> ).		
75. Eltham	. . . .				55. Woolwich.	25. Woolwich.
76. Woolwich	. . . .	28. Woolwich U.		40. Woolwich (A). <sup>3</sup>		
77. Plumstead	. . . .			41. Plumstead (A). <sup>2</sup>		
78. Charlton	. . . .			Lee District <i>continued</i> ( <i>see</i> No. 39 above).	56. Greenwich.	26. Greenwich.
79. Kidbrook.						
80. Greenwich	. . . .	29. Greenwich U.		42. Greenwich District (B).		
81. St. Nicholas, Deptford.						
82. St. Paul, Deptford	. . . .				57. Deptford.	27. Deptford.

St. Olave and St. Thomas, Southwark, have been united.

2. The parishes in the Lee district, together with the parishes of Plumstead, Hackney and Stoke Newington, formerly constituted the Plumstead district. That district was dissolved and the Lee district constituted, and the parishes of Plumstead, Hackney and Stoke Newington were placed under administrative vestries by the Metropolitan Management (Plumstead and Hackney) Act, 1893 (56 & 57 Vict. c. 52).

<sup>3</sup> Under the Woolwich Local Board of Health. See the note to sect. 19 of the London Government Act, 1892.

TABLE OF AREAS—*continued*.

Parishes.	Poor Law Unions.	Local Government Areas.	Parliamentary Divisions.	Parliamentary Boroughs.
113 parishes wholly within the City of London and St. Botolph, Aldersgate (part).	30. City of London U. <sup>1</sup>	43. City of London. <sup>2</sup>	58. City of London.	28. City of London.
<i>Excluding</i> Whitechapel (part)	In Whitechapel Union (see No. 21).			
<i>Including</i> Inner Temple	In no Union.	Extra-parochial (C).		
Middle Temple	In no Union.	Extra-parochial (C).		
<i>Excluding</i> Fumival's Inn (part)	In Holborn Union (see No. 23).	Extra-parochial (C).		
Staple Inn (part)	.. ..	Extra-parochial (C).		

<sup>1</sup> This also includes Glasshouse Yard. See parish No. 53.<sup>2</sup> The City of London was formerly under the jurisdiction of the City Commissioners of Sewers for local government purposes, but the functions of the Commissioners of Sewers have been transferred to the Common Council. See the note to sect. 1 of the London Government Act, p. 4. The area of the City for the purposes of the City Commissioners of Sewers and their successors also includes or included parts of Shoreditch, Saffron Hill, Glasshouse Yard and the Minories, but as to the Minories, see the note to parish No. 43.



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